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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

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COMMONWEALTH OF MASSACHUSETTS

VS.

Indictment No.
2282CR00117

KAREN READ

* * * * *

Day 19 - Trial with Jury
Before the Honorable Beverly Cannone

APPEARANCES:

For The Commonwealth:

BY: Adam Lally
Laura McLaughlin
Assistants District Attorney

For Karen Read:

BY: Alan Jackson
David Yannetti
Elizabeth Little
Attorneys at Law

Norfolk Superior Courthouse
Dedham, Massachusetts
Thursday, May 16, 2024

Paula M. Mills
Retired Certified Court Reporter
and Court Transcriptionist

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P R O C E E D I N G SMay 16, 2024

(Court in session at 9:11 a.m.)

(Defendant present. Jury not present.)

THE CLERK: 22-117, Commonwealth versus
Karen Read. Counsel?

THE COURT: Counsel wanted to see me at
sidebar?

MR. YANNETTI: We don't need to be seen at
sidebar, Your Honor, but I do need to be seen about
an issue from yesterday.

THE COURT: So you'd like to be heard?

MR. YANNETTI: Well, yes, I would.

THE COURT: Okay. I'll hear you. What is it
about?

MR. YANNETTI: Your Honor, we are not only
renewing our objection to the alleged harassment
evidence that came in yesterday but we are
specifically moving to strike that testimony and
specifically asking the Court before we get started
today to instruct the jury that they are to
disregard that evidence. And I wanted to point out
to the Court that it is our view -- we didn't even
come close to opening the door to that evidence.

I have just asked the witness if she has

1 turned over those text messages to the state police
2 when she spoke to them on August 25th of 2023. I
3 have asked every witness when was the first time
4 that they spoke to the state police. That was the
5 first time Alli McCabe spoke to the state police.

6 None of that conversation had anything to do
7 with harassment whatsoever. It was strictly
8 related to the death of John O'Keefe and the
9 investigation of John O'Keefe. I stayed completely
10 clear of any discussion of harassment whatsoever.
11 I only focused on the federal grand jury and the
12 approach by the state police on August 25.

13 I opened no door. I didn't even approach the
14 door. And, yet, that evidence came in. It led to
15 a moment where, you know, that Mr. Lally, I
16 believe, has been waiting for, which is for a
17 witness to break down on the stand and feel sorry
18 for themselves to gain sympathy before this jury.
19 It was prejudicial to our client. It's prejudicial
20 to our defense. It is error, and we are asking the
21 Court to correct it.

22 THE COURT: All right. What do you say,
23 Commonwealth?

24 MR. LALLY: Your Honor, counsel absolutely
25 opened the door as far as questioning was

1 concerned. It was not just -- the characterization
2 of the questioning is just simply inaccurate.

3 As far as the questions that were posed to the
4 witness, it was more geared towards why, implying
5 that the witness only provided this after
6 testifying at the other proceeding or being
7 questioned about it in any environment, and that's
8 the only reason that she had these messages and why
9 hadn't she turned these messages over earlier. And
10 that is in direct response to the harassment that
11 that witness and the entire family as well as
12 Mr. Albert had sustained as a result of actions by
13 several different parties, including counsel.

14 So for those reasons, it was proper. There
15 was nothing -- I don't think it was more than five
16 minutes of testimony concerning it and it was
17 because counsel opened the door.

18 THE COURT: All right. So Mr. Yannetti, I
19 remember clearly the lines of inquiry that you
20 initiated. So I disagree with you in the strongest
21 way possible. You've made your record. Your
22 motion is denied.

23 MR. YANNETTI: Thank you, Your Honor.

24 THE COURT: Okay. So let's bring in the
25 jurors, please.

1 (Whereupon, the jury is escorted into the courtroom
2 and seated in the jury box at 9:17 a.m.)

3 THE CLERK: Judge, 22-117, the Commonwealth
4 versus Karen Read.

5 THE COURT: All right. Good morning, counsel.
6 Good morning, Ms. Read. Good morning, jurors.

7 So I have to ask you those same three
8 questions. Were you all able to follow the
9 instructions and refrain from discussing this case
10 with anyone since we left yesterday?

11 THE COURT: Everyone said "yes" or nodded
12 affirmatively.

13 Were you also able to follow the instructions
14 and refrain from doing any independent research or
15 investigation into this case?

16 Everyone said "yes" or nodded affirmatively.

17 Did anyone happen to see, hear or read
18 anything about this case since we left the other
19 day, yesterday?

20 Thank you very much. Everyone said "no" or
21 shook their heads.

22 All right. May we have Mr. Albert, please?

23 Whereupon,

24 COLIN ALBERT, Resuming

25 having been first duly sworn, was examined and

1 testified under oath as follows:

2 THE COURT: All right. Whenever you are
3 ready, Mr. Jackson.

4 MR. JACKSON: Thank you.

5 CROSS-EXAMINATION

6 BY MR. JACKSON:

7 Q Mr. Albert, who did you talk to in order to
8 prepare for your testimony starting yesterday?

9 A Can you rephrase that question?

10 Q Yes. Rephrase the question? You didn't
11 understand my question?

12 A No.

13 Q Who did you speak to in order to prepare for
14 your testimony yesterday?

15 A My lawyer.

16 Q Other than your lawyer, who did you speak to
17 to prepare for your testimony yesterday?

18 A No one.

19 Q You didn't speak to your parents?

20 A No.

21 Q You didn't speak to your mom, your dad?

22 A No.

23 Q At any time before yesterday about your
24 testimony or your statements?

25 A No.

1 Q Did you discuss with your parents their
2 testimony?

3 A No.

4 Q So after they got off the witness stand, your
5 dad didn't come home and say, here's how my day went?

6 A No.

7 Q Your mom didn't come home and say, here's how
8 my day went?

9 A No.

10 Q The Albert family just ignored the fact that
11 both of them testified in a court of law before a jury
12 about the events of January 29th of 2022? Nothing was
13 ever said?

14 A No.

15 Q Did you talk to Mr. Lally at any point, at any
16 point, before yesterday in preparation for your
17 testimony?

18 A Before yesterday, you said?

19 Q Correct.

20 A Yes.

21 Q Tell me when.

22 A I want to say a month ago about.

23 Q What did you talk about?

24 A I got prepped for this.

25 Q Tell me what that means. What does it mean to

1 prep for this?

2 A What I'm going to be getting asked.

3 Q Okay. Remember my first question, very first
4 question this morning? I said, have you spoken to
5 anybody in order to prepare for your testimony, and you
6 said "no"?

7 A Yeah.

8 Q Okay. So that's not true. You spoke with
9 Mr. Lally.

10 A Okay.

11 Q It's not an okay. It's "yes" or "no."

12 A Yes.

13 Q Okay. You said that was about a month ago,
14 correct?

15 A Correct. Around a month ago.

16 Q Tell me -- I'm sorry. I didn't mean to --

17 A Around a month ago.

18 Q Okay. Tell me what you and Mr. Lally
19 discussed.

20 A The questions I would be asked here.

21 Q Can you be more detailed?

22 A I don't remember everything he said.

23 Q Did he go over the questions that he believed
24 he would ask?

25 A I believe so.

1 Q Did you give him answers to those questions
2 that you believed you would give in response to his
3 questions?

4 A Yes.

5 Q What questions did he tell you he was going to
6 ask?

7 A I don't remember.

8 Q What answers did you tell him you were going
9 to give?

10 A I don't remember.

11 Q That was just a month ago, right?

12 A Yes.

13 Q Obviously, you've been thinking about this
14 case quite a bit, haven't you?

15 A Yeah.

16 Q Over the last two and a half years?

17 A No.

18 Q How long have you been thinking about this
19 case?

20 A I guess since people started writing about me
21 on the Internet.

22 Q How about since you were at a house where an
23 individual ended up dead on the lawn the next morning?
24 Did that prompt you to start thinking about this case?

25 A No.

1 Q Not so much, huh?

2 A No.

3 Q Did you speak with -- when Mr. Lally spoke
4 with you, who else was there?

5 A The witness advocate, I believe, and --

6 Q Steve Nelson?

7 A Yes.

8 Q Who else?

9 A And is it Sergeant Tully, I believe?

10 Q Tully, T-U-L-L-Y?

11 A I believe so, yes.

12 Q Okay. Anybody else?

13 A Not that I remember.

14 Q Was Sergeant Tully taking notes while you were
15 having this conversation with Mr. Lally?

16 A I do not remember.

17 Q Was Mr. Lally taking notes?

18 A I do not remember.

19 Q Do you remember being told by either
20 Sergeant Tully or Mr. Lally that your conversation was
21 being recorded?

22 A I do not remember.

23 Q How long was that meeting?

24 A I'd say 15 minutes, 20 minutes.

25 Q Were you given any instructions either by

1 Sergeant Tully or Mr. Lally about your preparation for
2 your testimony?

3 A Can you rephrase that, please?

4 Q Sure. Did they give you any instructions
5 about the preparation for your testimony, how they
6 wanted you to answer questions? The tone and tenor of
7 your testimony.

8 A No.

9 Q How they wanted you to dress, for instance?

10 A No.

11 Q Other than that time a month ago, have you
12 spoken with Mr. Lally or anybody from the D.A.'s office
13 since then before yesterday?

14 A No.

15 Q Have you watched any coverage of this case
16 online?

17 A No.

18 Q No social media?

19 A No. I don't have social media.

20 Q No news coverage?

21 A No.

22 Q Nightly news, Channel 25, Channel 5?

23 A No.

24 Q National news?

25 A No.

1 Q Blogs?

2 A No.

3 Q So literally, according to you, you know zero
4 about the media coverage concerning this case,
5 Commonwealth versus Karen Read?

6 A Correct.

7 Q Did you talk to Alli before her testimony?

8 A No.

9 Q When was the last time you did talk to Alli
10 before she testified yesterday?

11 A I don't remember.

12 Q Give me an idea. She is one of your best
13 friends. A week ago? A day ago? A month ago?

14 A I do not remember.

15 Q Could it have been a year ago?

16 A I do not remember.

17 Q Okay. Could it have been five years ago?

18 A No.

19 Q Okay. So it's more recently than five years
20 ago that you spoke with Alli?

21 A I don't remember.

22 Q Okay. So you have no independent recollection
23 as you sit here the last time you talked to one of your
24 best friends, or your cousin, about any subject?

25 A No. I don't remember.

1 Q Okay. Were you ever told in preparation for
2 your testimony if you start to get stumped or nervous,
3 just say "I don't remember"?

4 A No.

5 Q Nobody ever told you that?

6 A Uh-uh. No.

7 THE COURT REPORTER: Is that "no"?

8 THE WITNESS: No. I'm sorry.

9 BY MR. JACKSON:

10 Q That's all right. So nobody ever informed you
11 that you might get nervous on the witness stand, there
12 might be tough questions and the easiest way to get out
13 of that is just say, yeah, I don't recall?

14 A No.

15 Q Okay. So you just don't recall because your
16 memory is that bad. You literally don't recall the
17 last time you spoke with Alli?

18 MR. LALLY: Objection.

19 THE COURT: So ask that differently,

20 Mr. Jackson.

21 MR. JACKSON: Sure.

22 BY MR. JACKSON:

23 Q Your testimony is you were not instructed to
24 say, I don't remember. You just literally don't
25 remember?

1 A Correct.

2 Q It's an issue with your memory, not an
3 instruction that you received?

4 A Correct.

5 Q Right. But you do remember two and a half
6 years ago you left 34 Fairview at 12:10 a.m., correct,
7 down to the minute?

8 A Correct.

9 Q Did Mr. Lally, during this meeting that y'all
10 had, did Mr. Lally show you anything, items of
11 evidence, photographs, videos, anything like that?

12 A No.

13 Q Did you two talk about any evidence that you
14 might see, photographs, documents, videos?

15 A Not that I remember.

16 Q He didn't show you the series of text messages
17 between you and Ms. McCabe, Allie?

18 A I don't remember.

19 Q So you're not saying he didn't. You're just
20 saying, again, you just don't remember?

21 A Correct.

22 Q Okay. And, again, this was just a month ago?

23 A Around a month. Correct.

24 Q It could have been sooner than a month? Let
25 me ask that a different way.

1 It could have been more recently than a month?

2 A I don't know.

3 Q You don't know that, either?

4 A Uh-uh.

5 THE COURT: Is that "no"?

6 THE WITNESS: Yes.

7 THE COURT: So, Mr. Albert, you have to answer
8 "yes" or "no," not just "uh-huh."

9 THE WITNESS: All right. Sorry.

10 BY MR. JACKSON:

11 Q Where were you when this meeting a month ago
12 took place?

13 A At the D.A.'s office on Shawmut Road.

14 Q Who contacted you to come to the D.A.'s
15 office?

16 A I do not remember that.

17 Q You don't remember that, either?

18 A No.

19 Q Phone call from Mr. Lally, maybe?

20 A I don't believe that I received a phone call.
21 Maybe my lawyer did or my father. But I don't know. I
22 don't believe I did.

23 Q So if your father received a phone call and
24 then told you, you need to go to the D.A.'s office to
25 meet Mr. Lally, that would be a conversation with your

1 dad about your preparation for your testimony, correct?

2 A I wouldn't say so, no.

3 Q You wouldn't categorize that as such?

4 A No.

5 Q Okay. Because, of course, even though you
6 went to the D.A.'s office to meet Mr. Lally and a
7 sergeant from the Massachusetts State Police to talk
8 about your testimony, you didn't mention that to your
9 dad?

10 A No.

11 Q You didn't mention that to your mom?

12 A No.

13 Q And, when you got done with that meeting, your
14 dad didn't ask you, how did it go, son?

15 A Nope.

16 Q Your mom didn't say, how was that meeting --

17 A No.

18 Q -- about this massive murder case?

19 MR. LALLY: Objection.

20 THE COURT: Sustained.

21 BY MR. JACKSON:

22 Q Let me ask it a different way. Do you
23 consider this to be a high-profile murder case?

24 MR. LALLY: Objection.

25 THE COURT: Sustained on relevancy. Ask it

1 differently.

2 BY MR. JACKSON:

3 Q In your mind, this is an important case,
4 correct, obviously?

5 A Correct.

6 Q But, according to you, it just never comes up
7 in the Albert household?

8 A No.

9 Q Okay. You were asked to look at a couple of
10 text messages yesterday that looked a little bit like
11 this. Have you seen that before?

12 A Yes.

13 Q When did you see that before?

14 A Yesterday.

15 Q Before yesterday, had you ever seen that
16 before?

17 A On my phone, yeah.

18 Q Okay. Other than on your phone when you made
19 the screenshot, had you ever seen that before? Did
20 Mr. Lally ever show that to you?

21 A Not that I remember, no.

22 Q So you two didn't discuss that in your meeting
23 a month or less ago?

24 A We could have. I don't remember.

25 Q But, again, you don't remember?

1 A Uh-uh.

2 Q Is that a "no"?

3 A No.

4 Q Okay. Did Mr. Lally tell you why he wanted to
5 question you about those text messages?

6 A I don't remember.

7 Q Did Mr. Lally tell you anything about what you
8 might be asked on cross-examination?

9 A No.

10 Q Did he ask you about any videos that you've
11 ever posted?

12 A No.

13 Q Did he ask you about any comments you've ever
14 made online?

15 A No.

16 Q Any photos you've ever been in?

17 A No.

18 Q Any fights you've ever been in?

19 A No.

20 Q Who is Courtney Proctor?

21 A My -- she is friendly with my Aunt Jillian.

22 Q I'm sorry?

23 A My Aunt Jillian she's friendly with.

24 Q When you say "friendly with," describe that.
25 What do you mean by "friendly with"?

1 A I know that they are pretty friendly.

2 Q Have you ever been to Courtney Proctor's home?

3 A Yes.

4 Q How many times would you say over the years?

5 A Four or five, maybe.

6 Q Her family is close to your family, it's fair
7 to say?

8 A Not that close. Close though.

9 Q When you say "not that close but close
10 though," what does that mean?

11 A I'd say we were more close when I was younger,
12 not when I got older.

13 Q Okay. How old are you now? You're 20?

14 A Correct.

15 MR. JACKSON: Your Honor, may I approach
16 briefly?

17 THE COURT: You may.

18 MR. JACKSON: I have a photo I'd like to show
19 Mr. Lally first. May I?

20 THE COURT: Yes.

21 BY MR. JACKSON:

22 Q Can you take a look at that photo and tell me
23 if you recognize it? Just look at it to yourself,
24 please, and let me know after you've studied it for a
25 second.

1 A Yes.

2 Q Do you recognize the photo?

3 A Yes.

4 Q Who is in that photo?

5 MR. LALLY: Objection.

6 THE COURT: The objection is sustained as to
7 the content of the photo. Do you want to come to
8 sidebar and explain this to me?

9 MR. JACKSON: Yes.

10 THE COURT: Would you mark that for
11 identification, please.

12 (Whereupon, wedding photograph was entered and
13 marked Exhibit "DD" for Identification.)

14 THE COURT REPORTER: "DD" for Identification.

15 THE COURT: Thank you.

16 (Whereupon, there was a sidebar conference as
17 follows:)

18 MR. JACKSON: This photograph establishes a
19 close familial relationship between the Albert
20 family, specifically this witness, and the Proctor
21 family.

22 THE COURT: Okay. He testified to that just
23 now.

24 MR. JACKSON: I know he did. And I want
25 photographic evidence of it as well. The jurors

1 are entitled to see it. I'm about to ask him a
2 series of questions about being in a wedding, being
3 part of the wedding party, the fact that that's
4 him, the fact that that is Michael Proctor.

5 THE COURT: Okay. So Michael Proctor, because
6 this is "DD" for identification, is what looks to
7 be a young man on the left-hand side, far left of
8 the photo. And Colin Albert, this witness, appears
9 to be the child standing next to a bride.

10 How many years ago is this?

11 MR. JACKSON: I want to say it was 2011.
12 Either '12 or '13. '12, I think.

13 THE COURT: Okay. What is the Commonwealth's
14 position on this?

15 MR. LALLY: The Commonwealth objects as it is
16 irrelevant and the time period is far too removed
17 to have any relevancy whatsoever. Furthermore, any
18 relationship between this witness and Julie
19 Proctor, again, goes to bias --

20 THE COURT: Goes to what?

21 MR. LALLY: It could be proper impeachment or
22 bias questioning for the trooper. But, again,
23 impeachment bears to the witness on the stand
24 pursuant to the case law. This witness is not an
25 investigator. His bias has absolutely no relevancy

1 whatsoever. There is no bias because just because
2 he knows a trooper.

3 MR. JACKSON: I couldn't disagree in stronger
4 terms. It is both of their biases. And the fact
5 that the photograph was taken several years ago
6 establishes a longstanding familial relationship
7 between this witness and the investigator, who
8 ultimately was the person in charge of and did, in
9 fact, conduct the investigation. It is the level
10 of comfort they had with each other.

11 The bias of Trooper Proctor showed the lack of
12 investigation on Trooper Proctor's part of this
13 particular witness. He's obviously a seminal
14 witness. The prosecution called him to the stand.
15 We didn't call him to the stand. The jurors are
16 entitled to realize the depth and nature of the
17 familiar relationship, and I think the photograph
18 speaks for itself.

19 THE COURT: So the photograph are cumulative.

20 MR. JACKSON: I'm sorry. The photographs --

21 THE COURT: Cumulative. I mean, he said not
22 that close with the family but close. And then he
23 said, more close when I was younger.

24 So I understand you want this in. You need to
25 establish a little bit more of why -- I'm not

1 letting it in now. I'm not inclined to let it in.
2 Let's see if you can develop it a little bit more,
3 which doesn't mean that you can describe the
4 picture intentionally.

5 MR. JACKSON: You're saying it's cumulative.
6 If I can't use the photo and I can't describe the
7 photo, how am I supposed to establish to the
8 witness's satisfaction or the Court's satisfaction
9 that the witness has a deep familial relationship
10 in the photo if I can't even describe it?

11 THE COURT: You can talk about it without --
12 you are a skilled trial lawyer. You know how to
13 get this in.

14 MR. JACKSON: I know.

15 THE COURT: So I'll give it back to you, and
16 we'll see where you go with it. It's not coming in
17 right now.

18 MR. JACKSON: May I give it back to the
19 witness so I can ask him about it?

20 THE COURT: Sure.

21 (Whereupon, the sidebar conference concluded.)

22 MR. JACKSON: May I approach, Your Honor?

23 THE COURT: Yes.

24 MR. JACKSON: Thank you.

25 BY MR. JACKSON:

1 Q Mr. Albert, approximately when was that
2 photograph taken?

3 MR. LALLY: Objection.

4 THE COURT: No. He can answer that question.

5 THE WITNESS: Ten years or less ago, I would
6 say.

7 BY MR. JACKSON:

8 Q Okay. You were the ring bearer in
9 Courtney Proctor's wedding, were you not?

10 MR. LALLY: Objection.

11 THE COURT: No. I'll allow that.

12 THE WITNESS: Correct.

13 BY MR. JACKSON:

14 Q So when you say we're friendly or we're close,
15 rather, but not that close, you were actually close
16 enough to be a member of her wedding party when she was
17 married to her now husband, correct?

18 A When I was younger, correct.

19 Q Well, of course it was when you were younger.
20 It was 10 years ago.

21 A Uh-huh.

22 Q Is that "yes"?

23 A Yes.

24 Q That's my question. So for at least a decade,
25 your family and the Proctor family has been close

1 enough such that you, an Albert, were in her wedding,
2 correct?

3 MR. LALLY: Objection.

4 THE COURT: Ask that differently, Mr. Jackson.

5 BY MR. JACKSON:

6 Q Well, at least at that time, 10 years ago,
7 your family was close enough to the Proctor family such
8 that you were a ring bearer in Courtney Proctor's
9 wedding, right?

10 A Correct.

11 Q And who is Courtney Proctor's brother?

12 A Michael Proctor.

13 Q And is Michael Proctor in the photograph that
14 you're looking at?

15 A Yes.

16 Q He's the person on the far left?

17 A Correct.

18 Q Looks like he's in a tuxedo?

19 A Correct.

20 Q You were also in a tuxedo?

21 MR. LALLY: Objection, Your Honor.

22 THE COURT: Sustained.

23 BY MR. JACKSON:

24 Q What I'm getting at is you all were part of
25 the same wedding party, correct?

1 A Correct.

2 Q And that's a photograph of Courtney Proctor's
3 wedding and the entire wedding party, correct?

4 MR. LALLY: Objection.

5 THE COURT: Sustained.

6 BY MR. JACKSON:

7 Q Is that a photograph of a wedding party?

8 MR. LALLY: Objection.

9 THE COURT: Sustained.

10 MR. JACKSON: Your Honor, may we approach?

11 THE COURT: Yes.

12 (Whereupon, there was a sidebar conference as
13 follows:)

14 MR. JACKSON: I don't understand how this is
15 cumulative or not relevant. They are literally
16 standing in the same wedding party. And, when I
17 ask if that is a wedding party, counsel is
18 objecting and it's getting sustained. What more
19 can I ask about the foundation of this photograph?

20 THE COURT: So I don't see why you need the
21 photograph of a wedding that's 10 years ago.

22 MR. JACKSON: Because I'm choosing what
23 evidence I want to present to a jury to establish
24 bias. It's one thing for them to hear about it.
25 It's another thing for them to see it. A picture

1 is worth a thousand words. This is basic hornbook
2 trial lawyering.

3 THE COURT: Okay. I disagree with you on
4 that. Tell me about your specific reason.

5 MR. JACKSON: My specific reason is because
6 that man on the left interviewed that young man, a
7 now grown man, on the right.

8 THE COURT: And you just got that through the
9 witness.

10 MR. JACKSON: I realize that. But the visual
11 of having them in the same wedding party at the
12 same time is powerful information that jurors can
13 weigh and balance in determining to assign
14 credibility not only to this witness as to his
15 description about the relationship with the
16 Proctors but ultimately with Michael Proctor and
17 his relationship with the Alberts.

18 THE COURT: What do you say, Commonwealth?

19 MR. LALLY: Your Honor, the fact that he is in
20 this wedding party as someone 12 years ago when
21 he's a child, again, the relationship to a family
22 does not equate to a relationship to an individual.
23 So the fact that he's in a wedding party as a ring
24 bearer and the brother of the bride is also in the
25 same wedding party 12 years ago has absolutely no

1 relevance whatsoever to 10 years later, any
2 interaction they may or may not have had.

3 And, as far as the investigation is concerned,
4 again, this is a trooper who, yes, he's involved in
5 the investigation but so are --

6 THE COURT: Is it in evidence that he
7 interviewed this witness?

8 MR. JACKSON: Yes. He was asked by Mr. Lally
9 yesterday.

10 THE COURT: Fine. And you told me that you
11 were going to go through the ease with which he
12 feels with the investigator and then the
13 investigator not going further. You didn't do any
14 of that just now.

15 MR. JACKSON: It's coming. I was going to
16 publish --

17 THE COURT: It might help you get the
18 photograph in.

19 MR. JACKSON: Okay.

20 (Whereupon, the sidebar conference concluded.)

21 MR. JACKSON: May I approach, Your Honor?

22 THE COURT: Yes.

23 MR. JACKSON: Thank you.

24 BY MR. JACKSON:

25 Q Mr. Albert, I want you to look at that one

1 more time. Both you and Michael Proctor are depicted
2 in the photograph, correct?

3 A Correct.

4 Q How long have you known Michael Proctor?

5 A Since I was a little kid.

6 Q And you've known him well enough to know -- I
7 don't want you to tell me or tell the jurors, but you
8 know where he lives?

9 A Yeah.

10 Q You consider the Proctor family close to your
11 family?

12 A Yeah.

13 Q During the course of, for instance, just as an
14 example, during the course of this event, a joyous
15 event at a wedding, you actually sat at the head table
16 along with the Proctor family because you were given
17 the honor of being the ring bearer in Courtney's
18 wedding, correct?

19 A Correct.

20 Q And you know, of course, that that is -- being
21 in a wedding party is reserved for the most special
22 family members and friends, correct?

23 MR. LALLY: Objection.

24 THE COURT: Sustained.

25 BY MR. JACKSON:

1 Q In your mind, was that a special honor?

2 MR. LALLY: Objection.

3 THE COURT: Is that what you thought when you
4 were in that?

5 THE WITNESS: I'd say so, yes.

6 THE COURT: Okay.

7 BY MR. JACKSON:

8 Q And you were never interviewed by Canton
9 Police Department in connection with this case,
10 correct?

11 A No.

12 Q How many times were you interviewed by the
13 Massachusetts State Police in connection with this
14 case?

15 A Once.

16 Q And that was in July of 2023, correct?

17 A I don't remember exactly when it was.

18 Q It was about a year and a half after the
19 events in question; is that right?

20 A Around there.

21 Q Would it refresh your recollection if you saw
22 a copy of a report of that interview, just as to the
23 date?

24 A Sure.

25 MR. JACKSON: May I approach, Your Honor?

1 THE COURT: Yes.

2 MR. JACKSON: If I may just have a moment,
3 Your Honor, please.

4 BY MR. JACKSON:

5 Q Take a look at Paragraph 1. It's in the
6 middle of the paragraph. Just read that to yourself,
7 please.

8 You got that?

9 A Yes.

10 Q You saw the July 18th date?

11 A Yes.

12 Q 2023?

13 A Yes.

14 Q Does that refresh your recollection that that
15 was the first time you were interviewed by the
16 Massachusetts State Police?

17 A Correct.

18 MR. JACKSON: May I approach, Your Honor?

19 THE COURT: Yes.

20 MR. JACKSON: Thank you.

21 BY MR. JACKSON:

22 Q Who conducted that interview?

23 A Michael Proctor and one of his partners, I
24 believe.

25 Q So Michael Proctor was the lead investigator

1 that interviewed you, correct?

2 A Correct.

3 Q That's the same Michael Proctor that appears
4 on the far left of the photo of that wedding party,
5 correct?

6 A Correct.

7 Q Did you find that that -- by the way, how long
8 did the interview last with Michael Proctor?

9 A I do not remember.

10 Q Do you remember testifying at one point that
11 it was about 10 minutes?

12 A No.

13 Q You testified at a different hearing, a
14 different proceeding, not this proceeding, one other
15 time, correct?

16 A Correct.

17 MR. JACKSON: If I may have just a moment,
18 Your Honor?

19 THE COURT: Yes.

20 MR. JACKSON: May I approach?

21 THE COURT: Yes.

22 BY MR. JACKSON:

23 Q I need a foundational question first. I
24 apologize. It's my fault, Mr. Albert.

25 Do you believe it would refresh your

1 recollection as to the length of that first interview
2 if you were to see your testimony from a prior
3 proceeding?

4 A Yeah.

5 MR. JACKSON: May I approach, Your Honor?

6 THE COURT: Yes.

7 BY MR. JACKSON:

8 Q Take a look at this. And I'm going to direct
9 your attention to Line 18 and 19 of that transcript.
10 Let me know when you've reviewed it.

11 Is that "yes"?

12 A Yes.

13 MR. JACKSON: May I?

14 THE COURT: Yes.

15 BY MR. JACKSON:

16 Q Does that refresh your recollection?

17 A Yes.

18 Q How long was that interview?

19 A Which interview?

20 Q The interview that you had with Michael
21 Proctor. That's what that question was about that you
22 just read.

23 A I still don't remember.

24 Q Okay. Do you recall that it says -- that you
25 testified, "Question: How long did the interview last

1 for" --

2 MR. LALLY: Objection.

3 THE COURT: The objection is sustained.

4 BY MR. JACKSON:

5 Q Did this refresh your recollection as to the
6 question and answer, how you answered the question, how
7 long that interview lasted?

8 A Yes.

9 Q Okay. Did you say 10 minutes?

10 A Yes.

11 Q So during the course of that 10-minute
12 conversation that you had with Michael Proctor, what
13 was the tone of that interview? Do you understand what
14 I mean by "tone"?

15 A I do not.

16 Q Okay. Was it hostile and accusatory?

17 A Not that I remember.

18 Q Was it antagonistic or confrontational?

19 A Can you use different words, please?

20 Q Sure. Was he being mean?

21 A No.

22 Q Okay. He was being nice, right?

23 A Professional, I'd say.

24 Q Yeah, because you've known him almost your
25 whole life, right?

1 A Yes.

2 Q He was friendly and cordial?

3 A Correct.

4 Q And the interview was comfortable?

5 A Say it again?

6 Q The interview was comfortable?

7 A Correct.

8 Q You didn't feel like you were on the hot seat?

9 A No.

10 Q Did you find that the interview with
11 Michael Proctor was consistent with the relationship
12 that you've had with him your whole life, meaning he's
13 always been friendly to you? He was just as friendly
14 in that conversation?

15 A Not really, no.

16 Q How was he different?

17 A I'd say more professional.

18 Q Okay. Obviously, he was doing a job, correct?

19 A Correct.

20 Q But, when you walked in, you recognized him?

21 A Yes.

22 Q He recognized you?

23 A Yes.

24 Q You made natural greetings with one another,
25 correct?

1 A Correct.

2 Q He questioned you about a few things?

3 A Correct.

4 Q He didn't look at your phone? He didn't ask
5 to take your phone away from you?

6 A No.

7 Q He didn't ask to seize your phone or seize any
8 other physical items from you?

9 A No.

10 Q You weren't asked to come down to the police
11 station and sit in an interview room or an
12 interrogation room, were you?

13 A No.

14 Q As a matter of fact, where did the
15 conversation take place for those 10 minutes?

16 A In the D.A.'s office on Shawmut Road.

17 Q The D.A.'s office on Shawmut Road. Who else
18 was there other than Trooper Proctor and his partner at
19 the time, Trooper Clark?

20 A Can you --

21 Q Who else was there? Was it just Trooper
22 Proctor, Michael Proctor, and Clark?

23 A Yes.

24 Q Okay. So it was just the three of you?

25 A Yes.

1 Q And Trooper Proctor was the one that was sort
2 of leading the conversation?

3 A Yes.

4 Q And, when it was done, he said, you're free to
5 go?

6 A Correct.

7 Q And he didn't take your phone?

8 A No.

9 Q He didn't ask you to look at any text
10 messages?

11 A No.

12 Q He didn't look through your phone?

13 A No.

14 Q He didn't take any screenshots or videos of
15 your phone or the contents of your phone?

16 A No.

17 Q He just let you walk out the door?

18 A Correct.

19 MR. JACKSON: Your Honor, may I publish the
20 photo?

21 THE COURT: Why don't you come over here for
22 just one second. May I have that, please?

23 (Whereupon, there was a sidebar conference as
24 follows:)

25 THE COURT: So, Mr. Jackson, are you telling

1 me now, after this line of questioning, that this
2 photo that I view as cumulative is essential to the
3 bias of this witness because this witness is your
4 third-party culprit or a third-party culprit
5 witness of yours? Is that why you intend to
6 introduce this exhibit?

7 MR. JACKSON: No. I don't believe that we are
8 forced at this point to put him in a category of a
9 third-party culprit. Evidence is still coming in
10 from the Commonwealth. The evidence is still being
11 explored by the defense.

12 This photograph is specifically to establish
13 the bias and lack of investigation or lack of
14 proper investigation by an investigator. This is
15 evidence that that investigator never should have
16 been interviewing this witness in the first place.
17 It should have lasted far longer than 10 minutes.
18 They should have done their due diligence. They
19 did nothing. They never looked at phones. They
20 never looked at text messages. They never looked
21 at the phone. They never sought an extraction.
22 This was a 10-minute conversation with someone a
23 year and a half after the fact that they left
24 pretty much alone for a year and a half,
25 notwithstanding the fact that he was at the house

1 for the interview at or around the time that
2 John O'Keefe was injured and --

3 The Court seems to have an issue with
4 establishing basic bias, and that's part of our
5 defense. This entire investigation has been
6 crippled by bias, personal relationships,
7 favoritism, et cetera. This is absolutely some of
8 the best evidence we have of that.

9 It's not cumulative of anything. We haven't
10 put any photographs in. It's not like this is the
11 tenth photograph, one; and it's certainly not more
12 prejudicial than probative. It's highly probative
13 to the relationship and the interpersonal
14 relationships that these witnesses have with this,
15 especially this witness has with the Proctor
16 family.

17 THE COURT: What is the Commonwealth's
18 position?

19 MR. LALLY: The Commonwealth's position is the
20 same. It's not evidence of that. And, as far as
21 it bears on the investigation, that does not bear
22 on this witness. He doesn't control what questions
23 are asked or what things are asked of him.

24 Furthermore, as far as anything to do with
25 third-party culprit, there is no evidence of third-

1 party culprit because there is no evidence of a
2 third-party culprit specifically as it relates to
3 this witness or numerous witnesses who have already
4 come and testified before this jury that he wasn't
5 even there at the same time as Mr. O'Keefe was.

6 THE COURT: All right. So I asked you that,
7 Mr. Jackson, because I think that might be a basis
8 to let it in. But, on that basis, it is strictly
9 cumulative; and it's not coming in.

10 Is there anything else you want to say?

11 MR. JACKSON: If there is -- if we develop a
12 third-party culprit defense to our satisfaction
13 ultimately that we are comfortable with and
14 ultimately the Court is comfortable with, I think
15 that should come in for that purpose.

16 However, irrespective --

17 THE COURT: You can renew it.

18 MR. JACKSON: I appreciate that. I appreciate
19 the Court leaving the door open, but I believe
20 strongly that this goes to a *Bowden* defense, as
21 well, which is what we are really exploring at this
22 point. It's a lack of investigative interest in
23 this witness. Why? Because he's a kid that he's
24 known his whole life. I mean --

25 THE COURT: I get all that. You got all that

1 into evidence, which is why I contend your own
2 photograph is cumulative. But I will leave it open
3 if you tie it in otherwise. And, just so you know,
4 it's "DD." Okay?

5 MR. JACKSON: Thank you.

6 (Whereupon, the sidebar conference concluded.)

7 MR. JACKSON: May I inquire, Your Honor?

8 THE COURT: Yes.

9 MR. JACKSON: Thank you.

10 BY MR. JACKSON:

11 Q Mr. Albert, I want to shift gears for a quick
12 second. On July 27th, you and your attorney appeared
13 at a hearing in a separate proceeding, correct?

14 A I don't --

15 Q Let me ask it a different way. You testified
16 at a different proceeding, not this trial but a
17 different proceeding?

18 A Correct.

19 Q Okay. And you were put under oath. You
20 appeared with your lawyer. You gave testimony, and
21 that's part of what you looked at a second ago?

22 A Correct.

23 Q But, when you met with Michael Proctor, you
24 did not feel the need to take an attorney with you. It
25 was just you, Michael Proctor and Investigator Clark,

1 correct?

2 MR. LALLY: Objection.

3 THE COURT: Sustained.

4 BY MR. JACKSON:

5 Q You were asked yesterday about certain texts
6 with your cousin, Alli, correct?

7 A Correct.

8 Q Alli is obviously family?

9 A Yes.

10 Q But she's more than family. She's also a good
11 friend of yours?

12 A Correct.

13 Q As a matter of fact, she's one of your best
14 friends?

15 A Correct.

16 Q And, at your age -- this is not meant to be
17 pejorative, but we are different generations. At your
18 age, your most convenient way of communicating is
19 through text messages, correct?

20 A Correct.

21 Q I mean, if you're going to grab a buddy and
22 say, let's meet at the such and such ballfield or
23 whatever, you're going to text him, probably, not call
24 him?

25 A Either/or.

1 Q But testing is pretty common between you and
2 your friends?

3 A Yes.

4 Q Texting is certainly common between you and
5 Alli. We've already seen evidence of that, right?

6 A Yes.

7 Q And that's generally how you like to
8 communicate with Alli?

9 A I'd say so, yeah.

10 Q In fact, when you reached out to her for a
11 ride, there were like eight text messages back and
12 forth just for a pickup, correct?

13 A Correct.

14 MR. JACKSON: May I have just a moment, Your
15 Honor?

16 THE COURT: Sure.

17 MR. JACKSON: May I approach, Your Honor,
18 briefly?

19 THE COURT: Yes.

20 BY MR. JACKSON:

21 Q I just want to have that in front of you.

22 MR. JACKSON: Your Honor, with the Court's
23 permission, could we place Exhibit 81 on the
24 screen?

25 THE COURT: Okay.

1 MR. JACKSON: Your Honor, may I approach? I'd
2 like to use the ELMO instead.

3 THE COURT: Okay. Is there any objection to
4 that?

5 MR. LALLY: No, Your Honor.

6 MR. JACKSON: May I have that back?

7 THE COURT: Mr. Jackson, do you want the
8 Commonwealth to pull it up for you?

9 MR. LALLY: I'd be happy to, Your Honor.

10 MR. JACKSON: That would be great.

11 THE COURT: Thank you.

12 THE CLERK: May I approach the witness just to
13 give him a hard copy?

14 THE COURT: Yes.

15 BY MR. JACKSON:

16 Q Okay. You see what's displayed on the screen?

17 A Yes.

18 Q It's only part of the text string, but does
19 that look like it's an accurate representation of what
20 you're looking at?

21 A Yes.

22 Q And this is a series of texts on or about
23 January 28th and 29th of 2022; is that right?

24 A Yes.

25 Q And, Mr. Albert, you needed something as

1 simple as a ride. You were just asking Alli to give
2 you a ride; is that right?

3 A Yes.

4 Q And that's because you said that it's common
5 for you guys to text back and forth. You just texted
6 her, hey, you can get me now; is that right?

7 A Yes.

8 Q And then you texted, if it's easier. And then
9 she said, okay. I'm dropping people off. And there
10 was an exchange back and forth; is that right?

11 A Yeah.

12 Q And there were at least eight texts between
13 the two of you, if you just count them up real quick,
14 just about getting picked up?

15 A Yeah.

16 Q But, if you scroll down a little bit, after
17 the end of that text train that ends at 12:10 a.m. and
18 says, okay, do you see the next date?

19 A Yes.

20 Q What date is that?

21 A February 20.

22 Q That's nearly a month later, correct?

23 A Correct.

24 Q So there was a gap after January 29th, 2022
25 when you found out that a man had ended up dead on your

1 uncle's lawn and you and Alli did not text each other
2 for a month, not once.

3 MR. LALLY: Objection.

4 THE COURT: Sustained as to that form.

5 BY MR. JACKSON:

6 Q Isn't it true that on January 29th, later in
7 the day, you found out about John O'Keefe and his
8 condition, the fact that he died?

9 MR. LALLY: Objection.

10 THE COURT: Is that true? Did you find out
11 that day?

12 THE WITNESS: Yes.

13 THE COURT: Okay.

14 BY MR. JACKSON:

15 Q So you were well aware -- we can take that
16 down.

17 You were well aware, Mr. Albert, that
18 something very tragic had happened at your uncle's
19 house, Brian Albert's house, right?

20 A Correct.

21 Q And you were aware that you had been at your
22 uncle's house that night, right?

23 A Correct.

24 Q You were also aware that, according to you,
25 Alli McCabe was the one that picked you up and took you

1 from that location?

2 A Correct.

3 Q And, notwithstanding the fact of this tragedy,
4 you and Alli didn't text each other one time for a
5 month; is that right?

6 A I don't think that's correct.

7 Q So where are all those texts?

8 A We text on other platforms, too. So I'd say
9 other apps.

10 Q So is there a reason why you decided for the
11 next month to just switch platforms to maybe Snapchat?

12 MR. LALLY: Objection.

13 THE COURT: I'll allow it.

14 THE WITNESS: No reason.

15 BY MR. JACKSON:

16 Q Are you sure that you switched platforms?

17 A I'd say so, yeah.

18 Q Why did you switch platforms?

19 A We go back and forth, I'd say, between
20 platforms texting.

21 Q You switched platforms because you know that
22 Snapchat deletes all communications, correct?

23 MR. LALLY: Objection.

24 THE COURT: Ask it differently, Mr. Jackson.

25 BY MR. JACKSON:

1 Q Do you know that Snapchat has an auto-delete
2 function on it?

3 A If your app is set to that, yes.

4 Q Your app was set to that, wasn't it?

5 A I do not remember that.

6 Q So again, your memory is failing you?

7 A Can you rephrase that?

8 Q Sure. Once again, your memory is failing you?
9 You just don't remember?

10 MR. LALLY: Objection.

11 THE COURT: Ask it differently, Mr. Jackson.

12 BY MR. JACKSON:

13 Q Isn't it true, Mr. Albert, that you either
14 switched platforms or deleted the texts because you did
15 not want your text communications with Alli McCabe to
16 be discovered?

17 MR. LALLY: Objection.

18 THE COURT: Overruled.

19 BY MR. JACKSON:

20 Q Is that right?

21 A That's not true.

22 Q So where are those communications?

23 A I do not know.

24 Q You can't produce them right now, can you?

25 A I'm not sure.

1 Q So in the days, the hours and days and weeks
2 following the death of John O'Keefe, your
3 communications with your best friend, Alli, the person
4 who gave you a ride home that night, they are just
5 gone, right?

6 A I'm not sure.

7 Q You testified that you provided Exhibit 81,
8 what we were just looking at and you're still looking
9 at in front of you, as a screenshot of your
10 communications on January 29th, 2022 with Alli McCabe,
11 correct? It was a screenshot?

12 A Can you say that again? I'm sorry.

13 Q You provided that item as a screenshot, not as
14 an actual text to law enforcement; is that right?

15 A I don't believe so.

16 Q Okay. Do you know what a screenshot is?

17 A Yes.

18 Q What's a screenshot?

19 A When you take a picture on your phone.

20 Q That's a picture from your phone?

21 A Yes.

22 Q Okay. So it is a screenshot?

23 A Yes. It is a screenshot.

24 Q Okay. That is my question.

25 When you met with Michael Proctor in that

1 interview that lasted 10 minutes, Michael Proctor did
2 not get the actual texts underlying that screenshot,
3 did he?

4 A No.

5 Q He never looked for those actual texts, did
6 he?

7 A No.

8 Q He never asked you for those actual texts, did
9 he?

10 A No.

11 Q And you never volunteered to give him those
12 actual texts, did you?

13 A I think I volunteered to, yeah.

14 Q On that day?

15 A Oh, no, not on that day.

16 Q Not on that day. Do you know what a phone
17 extraction is?

18 A Not familiar.

19 Q Have you ever heard of a phone imaging or a
20 phone extraction or forensic extraction? Do any of
21 those words sound familiar?

22 A Not really, no.

23 Q Michael Proctor never asked you, I think it's
24 fair to say now, given that answer, Michael Proctor
25 never asked you if he could do a phone extraction of

1 your cell phone, did he?

2 A No.

3 Q He never asked if he could take a forensic
4 image of your phone, did he?

5 A No.

6 Q Do you know what metadata is?

7 A No.

8 Q Do you know the dates and times you take a
9 photo on your phone, sometimes it will -- well, not
10 sometimes, all the time it will capture the date and
11 time of the photo? Do you know that?

12 MR. LALLY: Objection.

13 THE COURT: I'll hear the answer, and it may
14 end this very quickly. Do you know that?

15 THE WITNESS: I'm pretty sure. I'm pretty
16 sure I do, yes.

17 BY MR. JACKSON:

18 Q Have you ever heard of that data, the dates
19 and times and geolocations, have you ever heard of that
20 referred to as metadata?

21 A No.

22 Q Okay. So I'll just use the word "date and
23 time."

24 A Okay.

25 Q You know that on your phone if you pull up a

1 text, you can go behind the text and see the date and
2 time that it was actually sent or received, right?

3 A Yes.

4 Q But, on a screenshot, you are left with just
5 what's on the screen; you can't go behind the
6 screenshot, right?

7 A Yeah.

8 Q Okay. You've provided just the screenshot
9 ultimately, not the actual text, correct?

10 A Correct.

11 Q But, in September of 2023, Michael Proctor's
12 partner, a man by the name of Yuri Bukhenik -- do you
13 know that name --

14 A Yeah.

15 Q -- he contacted you and said he wanted to talk
16 about your text messages, correct?

17 A I don't remember.

18 Q Do you remember that you told Yuri Bukhenik
19 when he asked about the text messages you did not have
20 the screenshot anymore? You sent it to your father,
21 Chris?

22 Q I don't remember that.

23 Q Do you recall telling Yuri Bukhenik if he
24 wanted to get the screenshot, you weren't going to give
25 it to him. He'd have to get it from your dad?

1 A I do not remember that.

2 Q Do you remember Trooper Bukhenik agreeing with
3 you and saying, sure, I'll just call your dad and get
4 it from him?

5 A I don't remember that.

6 Q You don't remember giving -- you certainly
7 don't remember ever giving Trooper Bukhenik a copy of
8 your -- a copy of that screenshot?

9 A No. I don't remember.

10 Q Because you didn't, did you?

11 A I do not remember.

12 Q But you did give it to your dad, right?

13 A I do not remember.

14 Q Do you remember anything about this case?

15 MR. LALLY: Objection, Your Honor.

16 MR. JACKSON: I'll withdraw it.

17 BY MR. JACKSON:

18 Q To this day, you've never been required to
19 present your phone to any law enforcement agent, have
20 you?

21 A No.

22 Q It was never imaged and it was never
23 downloaded?

24 A No.

25 Q Do you still have the same phone?

1 A Yes.

2 Q If you had the actual texts on your phone, why
3 did you provide law enforcement with just a screenshot?

4 MR. LALLY: Objection.

5 THE COURT: I will allow that.

6 THE WITNESS: I am not sure.

7 BY MR. JACKSON:

8 Q You were shown a photo yesterday of you in
9 February of 2022 with your aunt. Do you remember that
10 photo?

11 A Yes.

12 Q Mr. Lally showed you that photo?

13 A Correct.

14 Q And he said he wanted you to pay special
15 attention to your face and hands and extremities and
16 asked you if there was anything unusual about that?

17 A Yes.

18 Q And you said, no, in that photo there was
19 absolutely nothing unusual in February of '22 about
20 you, your face, your hands, your fists, nothing, right?

21 A Correct.

22 Q I want to draw your attention to February
23 26th, same month, less than a month after the incident.
24 You were in a place called Fenway Johnnies with your
25 buddies, weren't you?

1 A Correct.

2 MR. JACKSON: Your Honor, I have two documents
3 I'd like to mark for identification. With the
4 Court's permission, I'll show them to Mr. Lally.

5 THE COURT: Okay.

6 (Whereupon, sheet of photographs was entered and
7 marked Exhibit "EE" for Identification.)

8 (Whereupon, photograph was entered and marked "FF"
9 for Identification.)

10 THE COURT REPORTER: "EE" and "FF" for
11 Identification.

12 THE COURT: Thank you.

13 MR. JACKSON: May I present these to the
14 witness, Your Honor?

15 THE COURT: Yes.

16 MR. JACKSON: Thank you.

17 MR. LALLY: May we approach?

18 THE COURT: Yes. Let me see them. All right.
19 (Whereupon, there was a sidebar conference as
20 follows:)

21 THE COURT: So tell me what you are planning
22 on doing, Mr. Jackson. Start with "FF."

23 MR. JACKSON: "FF" is just an enlargement of
24 "EE," which is that single photo.

25 THE COURT: Okay. So "EE," just for the

1 record, appears to be six thumbnails with an
2 additional six partials.

3 MR. JACKSON: Yesterday, Mr. Lally opened the
4 door to this line of inquiry presenting a
5 photograph in February, that he claims was in
6 February of this particular witness.

7 THE COURT: Yes. I was just trying to go back
8 and find the date. What was the photo that's in
9 evidence, like February 11th or something?

10 MR. YANNETTI: That's what the testimony was.

11 MR. JACKSON: Which we dispute. But, given
12 the fact that he opened that door, he specifically
13 asked the witness questions about his face, his
14 hands, his extremities, et cetera, implying that
15 this witness as having been in a fight. He wasn't
16 in a fight. He's got no injuries suggestive of
17 fight, et cetera.

18 That particular photo is manipulable. That
19 photo was taken by a family member. It was on
20 their phones. It was on their own data.

21 THE COURT: So I just have to ask, though,
22 because I missed it. Where is there evidence that
23 it was manipulated?

24 MR. JACKSON: I think that the fact that it's
25 manipulable is the evidence that needs to be

1 weighed and balanced. I don't have to prove that
2 it was manipulated, but I --

3 THE COURT: But I can say that there is no
4 evidence of that. But go ahead. I'll hear this.

5 MR. JACKSON: So what I can prove is that on
6 February 26, that photo is not manipulable because
7 it doesn't belong to any of the parties. This was
8 taken at an event, an event logo. It is taken by
9 an event staff member. So they had no access to
10 dates, times, metadata, changing anything, et
11 cetera. It shows very clearly that this witness
12 appeared significantly injured, white knuckles
13 indicating a fight, indicating some level of
14 violence, indicating a physical altercation, et
15 cetera.

16 THE COURT: What do you say, Mr. Lally?

17 MR. LALLY: Your Honor, I don't know that
18 there is any evidence that this came from a source
19 or that it's not able to be manipulated. I also
20 know -- I don't know what that is on the "EE"
21 that's on the side there as far as whatever
22 labeling is on there is complete and utter hearsay.
23 I don't know what any relevancy any of the other
24 photos have. But, as it pertains to this event, it
25 is irrelevant. There is no evidence that the first

1 photograph is manipulated. There is no evidence
2 that the first photograph wasn't taken on February
3 11th. And, if it was, then there is absolutely no
4 relevancy to this.

5 MR. JACKSON: Mr. Lally did not have to put
6 that evidence in. He chose to open the door to
7 this. He's put the relevance of this right before
8 the Court. He doesn't get to have his cake and eat
9 it too, saying there's no injuries and knowing full
10 well that we have a photo that shows significant
11 injuries.

12 THE COURT: All right. You're telling me it's
13 February 26th. And, just so it's clear, "EE" is
14 something from Facebook from someone named Caitlin,
15 who posted it. That's not a Caitlin in this case,
16 correct?

17 MR. JACKSON: No.

18 THE COURT: And it's a bunch of young adults
19 posing and partying. What I'll let you do,
20 because it appears that the injuries to
21 Mr. Albert's knuckles on his right hand in "FF" are
22 not recent, I will let you put in -- colinalbert34
23 means he posted this himself?

24 MR. JACKSON: I am assuming he did.

25 THE COURT: Okay. So the "colinalbert34" will

1 come off because you don't know. You can show him
2 -- I'm not letting "EE" in.

3 MR. JACKSON: I would say I'll redact
4 everything on "EE." He has already established --
5 I don't need "EE." He just established that he was
6 there on the 26th. That's all I need.

7 THE COURT: Right. So you can show him this
8 and you can put this -- I realize it's post-
9 February 11th.

10 Ms. McDermott, could I have that photograph?
11 What exhibit number is the photo?

12 MR. LALLY: I think it's either 83 or 84.

13 THE COURT: Eighty-three or 84?

14 MR. LALLY: It's in the book. Ms. McLaughlin
15 is going to get it.

16 THE COURT: Okay. Do you know if you can see
17 his right hand in that? I think it's hanging down
18 by his side and you can see it.

19 MR. JACKSON: It's around the neck.

20 MR. LALLY: You can still see it, yes.

21 THE COURT: But there was a separate one where
22 he doesn't have his arm around somebody, and I
23 think that's the right hand. Is that the right
24 hand?

25 MR. LALLY: I believe it is, yes. Your Honor,

1 for the record, also with those exhibits, as the
2 Court had requested, we redacted the dates off of
3 those.

4 THE COURT: Yes. Thank you. Also showing
5 right knuckles in 82. In 83, you can see his right
6 hand. All right. I am going to give you that.
7 It's giving you quite a bit of leeway, Mr. Jackson.
8 So that has to be redacted if you intend to show
9 it. So these have exhibit numbers on them. These
10 are trial exhibits. We need these.

11 MR. JACKSON: I'll ask my IT person to just
12 show this portion without the --

13 THE COURT: Yes. I don't think you can
14 separate that.

15 MR. JACKSON: No. That's impossible.

16 THE COURT: The "Johnnies." All right. So
17 I'll give you "EE" in case you need it because he
18 doesn't remember.

19 MR. JACKSON: Understood. Thank you.

20 THE COURT: You need to physically put it in
21 evidence first.

22 (Whereupon, the sidebar conference concluded.)

23 THE COURT: So you are putting it in evidence
24 before you display it?

25 MR. JACKSON: Yes, Your Honor. May I approach

1 one more time?

2 THE COURT: Yes.

3 BY MR. JACKSON:

4 Q Sir, do you recognize those two documents?

5 A Yes.

6 Q Taking a look at the one that's got multiple
7 documents on it, I don't want you to tell me what's on
8 it. Just tell me if you recognize the picture that's
9 in the middle to the right.

10 A Yes.

11 Q And then looking at the second document which
12 I believe is marked "EE" for Identification at this
13 point, does that appear to be a true and accurate
14 enlargement of the first thumbnail?

15 A Yes.

16 Q And those were taken on February -- that photo
17 was taken on February 26, 2022?

18 A Yes.

19 Q At the place called, I think it's called,
20 Fenway Johnnies, right?

21 A Correct.

22 MR. JACKSON: May I publish the --

23 THE COURT: Put it into evidence first.

24 MR. JACKSON: Move for the admission of just
25 "EE."

1 THE COURT: So you need to give it to the
2 court reporter.

3 MR. JACKSON: May I approach?

4 THE COURT: Yes.

5 MR. JACKSON: "FF."

6 THE COURT: Okay. Give it to Madam Court
7 Reporter to put the exhibit label on it.
8 (Whereupon, photograph (previously "FF") was
9 entered and marked Exhibit No. 85 in Evidence.)

10 THE COURT REPORTER: That will be Exhibit 85,
11 Your Honor, "FF."

12 MR. JACKSON: May I?

13 THE COURT: Yes.

14 BY MR. JACKSON:

15 Q Do you see that photograph that's being
16 displayed?

17 A Yes.

18 Q Are you in that photograph?

19 A Yes.

20 Q Which person are you?

21 A In the middle.

22 Q And about what time of day was it? That's you
23 in the middle?

24 A Correct.

25 Q Okay. About what time of day was this taken?

1 A I'm not sure.

2 Q Was it at an event of some sort or just you
3 were at a bar?

4 A Just at a bar.

5 Q Okay. I want you to take a look at your right
6 hand. Can you see from there clearly your right hand?

7 A Yes.

8 Q What do you notice about your right hand?

9 A It's cut up.

10 Q Your knuckles are injured, correct?

11 A Correct.

12 Q Now, you didn't take this photo, did you?

13 A No.

14 Q That photo was never on your phone? In other
15 words, it wasn't a friend of yours that took the photo,
16 correct?

17 A No.

18 Q This was taken by an event staff member; is
19 that right?

20 A Correct.

21 Q It was later posted on social media; isn't
22 that right?

23 A Correct.

24 Q You could not access the metadata? You
25 couldn't access the time and date of that photo,

1 correct?

2 A I'm not sure what you mean by that.

3 Q You couldn't manipulate the time or date this
4 photo was taken?

5 A No.

6 Q This photo was completely sort of out of your
7 control; isn't that right?

8 A Correct.

9 Q And it was controlled by the event staff at
10 Fenway Johnnies?

11 A Correct.

12 Q And, on February 26th, less than a month after
13 the incident at Fairview, that's what your right
14 knuckles looked like, correct?

15 A Correct.

16 Q And this is a true and accurate depiction of
17 your condition on or about February 26th, correct?

18 A Correct.

19 Q How did you get those injuries, Mr. Albert?

20 If we can pull the lights up?

21 A I was at a party, a house party my senior
22 year. It was -- I remember it being icy out and I was
23 -- it was kind of like a steep hill of a driveway. And
24 I was walking up the driveway, and I slipped down the
25 driveway. And I tried to catch myself, but I had

1 something in my left hand. So I tried to brace myself
2 with my right hand, and I ended up sliding a little bit
3 down the driveway.

4 Q What did you have in your left hand?

5 A If I remember, it was either my phone or a
6 beverage.

7 Q So according to you, you fell on ice and
8 injured your knuckles, as we just saw in that
9 photograph, right across the top of your knuckles?

10 A Correct.

11 Q Okay. So you fell onto what, pavement,
12 asphalt?

13 A Yes.

14 Q And you braced yourself when you fell, your
15 entire body weight, by putting your right hand down in
16 a fist and you injured your right fist, just at the top
17 of the knuckles on your right fist, when you fell down?

18 A Correct.

19 Q Seriously?

20 MR. LALLY: Objection, Your Honor.

21 THE COURT: Sustained.

22 BY MR. JACKSON:

23 Q You didn't put your palms down when you fell?

24 A No.

25 Q You put your entire body weight on your right

1 fist and just injured the top portion of your knuckles,
2 correct?

3 A Correct.

4 Q Those injuries to your knuckles look an awful
5 lot like the type of injuries that you would get in a
6 fight, don't they?

7 MR. LALLY: Objection, Your Honor.

8 THE COURT: Sustained.

9 BY MR. JACKSON:

10 Q Have you ever been in a fight, sir?

11 A Other than with my brothers, no.

12 Q You've never been in a fight?

13 A No.

14 Q Your entire life?

15 A Other than with my brothers, no.

16 Q You never hurt your knuckles before?

17 A I'm not sure what you mean.

18 Q You never hurt your knuckles in a fight?

19 A No.

20 Q And, in this case when you fell down on the
21 asphalt, it was only the top four knuckles of your
22 right hand, correct?

23 A Correct.

24 Q Are you right handed or left handed?

25 A Right handed.

1 Q Do you box?

2 A No.

3 Q I'm sorry. You don't box?

4 A Nope.

5 Q You've never boxed?

6 A Never.

7 Q Have you ever practiced boxing?

8 A I've hit the bag for, like, cardio, but other
9 than that, no.

10 Q When you hit the bag, is that considered
11 boxing?

12 A I wouldn't say so.

13 Q I mean, it's not jumping rope, is it,
14 Mr. Albert?

15 A No.

16 Q It's not doing curls?

17 A No.

18 Q It's not doing pushups or calisthenics?

19 A No.

20 Q It's hitting a bag, correct?

21 A Yeah.

22 Q That's boxing, right?

23 A I'd say, yeah.

24 Q Yeah. When that photograph was taken at
25 Fenway Johnnies, those knuckles looked like they had

1 been reinjured from a prior injury. No?

2 A No.

3 Q Just falling on the asphalt?

4 A Correct.

5 Q Any other cuts or scrapes from that terrible
6 fall on the asphalt?

7 MR. LALLY: Objection, Your Honor.

8 MR. JACKSON: I'll rephrase it.

9 BY MR. JACKSON:

10 Q Any other cuts or scrapes or injuries from
11 that fall?

12 A I don't remember.

13 Q Just your right knuckles?

14 A Yeah.

15 Q You said you've never been in a fight before?

16 A No.

17 Q Did you post a video where you threatened that
18 you're going to, quote --

19 MR. LALLY: Objection, Your Honor.

20 MR. JACKSON: If I could finish the question?

21 THE COURT: The objection is sustained. I'll
22 see you at sidebar on this.

23 (Whereupon, there was a sidebar conference as
24 follows:)

25 THE COURT: All right. So this is one of the

1 videos that people were kind enough to send me.
2 There are two, two drunken videos with this kid, is
3 that right, that you sent me?

4 MR. JACKSON: I don't know if they are drunken
5 or not but two videos of this kid.

6 THE COURT: Okay.

7 MR. JACKSON: One is just a -- just to define
8 them, one is the Advantage Boys, "I'll fuck you
9 up," and one is "KO Bang, Bang," two separate
10 videos.

11 THE COURT: Okay. Neither one of them depicts
12 fighting, right?

13 MR. JACKSON: They both threaten fighting
14 significantly.

15 THE COURT: What do you say, Mr. Lally?

16 MR. LALLY: They are videos of a high school
17 kid talking about a hockey team. There is no
18 evidence that any fight ever occurred between
19 himself and this group. There is no evidence that
20 anything was ever actually followed up on. So it
21 doesn't go to bias. It doesn't go to impeachment.
22 It goes strictly to character, which is subject to
23 the motion in limine which the Court allowed as far
24 as reference to any of these witnesses.

25 So I don't see any relevance whatsoever to --

1 it has nothing to with John O'Keefe. It has
2 nothing to do with anybody that has anything to do
3 with this case. Online social media fodder is what
4 it is.

5 MR. JACKSON: That's not online social media
6 fodder when he's threatening to, quote, "beat your
7 ass," pardon my French, "to fuck you up. I'm going
8 to fuck you up. I'm going to beat your ass." KO
9 means knockout, "Bang Bang."

10 These are not the innocent musings of a child.
11 These are a grown young man making violent threats
12 toward other individuals, and he is just testified,
13 I've never been in a fight in my life.

14 The Commonwealth is doing their absolute best
15 to sanitize this person's reputation. It is wrong.
16 It is a fraud on the jury.

17 THE COURT: I disagree with all of that,
18 but --

19 MR. JACKSON: The Court disagrees that the
20 Commonwealth is trying to sanitize this young man
21 as an Eddie Haskell who has never been in a fight?

22 THE COURT: Hold on. And committing a fraud
23 upon this jury.

24 MR. JACKSON: No. I'm not saying that.

25 THE COURT: You did just say that.

1 MR. JACKSON: I'm not saying that he's
2 committing the fraud. I'm saying the witness is
3 committing the fraud on the jury. It's not a true
4 and accurate representation of his --

5 THE COURT: So explain to me. We are going to
6 need to play the video and have a voir dire.

7 MR. JACKSON: I'm happy to.

8 THE COURT: All right. I thought it was two
9 different videos.

10 MR. JACKSON: They are.

11 THE COURT: Which one are you planning to try
12 and introduce?

13 MR. JACKSON: I was going to do Advantage Boys
14 first and then the Bang Bang second.

15 THE COURT: I don't remember. I watched these
16 whenever you gave them to me. I just remember two
17 drunken videos.

18 MR. JACKSON: It's been a while. They are
19 probably 10 seconds each. They're not long. Maybe
20 one is 15 seconds.

21 THE COURT: So what I'd like to do is we will
22 let the jury out. I'd like to see the videos again
23 on the screen as the jury would see them.

24 MR. JACKSON: Sure.

25 THE COURT: And then I'll hear your -- we'll

1 see them. We'll have a voir dire of this witness.
2 Then I'll hear your arguments. Then I'm going to
3 go watch them again in my lobby. That's how I'd
4 like to do it.

5 MR. JACKSON: Yes, Your Honor.

6 THE COURT: So it will be a long break for the
7 jurors, and you-all will get a very short break
8 afterwards. Okay?

9 MR. JACKSON: Understood.

10 (Whereupon, the sidebar conference concluded.)

11 THE COURT: All right. At this time, I am
12 going to send you out for a recess. We have some
13 work we have to do here. It wasn't early enough
14 for me to get you coffee and bagels. I apologize
15 for that. But we will be a little bit. So we will
16 send you out for the morning recess.

17 (Whereupon, the jury is escorted from the courtroom
18 for a brief recess.)

19 THE COURT: So Mr. Albert, you stay right
20 where you are. We are going to see a couple of
21 short videos and then Mr. Jackson will ask you
22 questions and then Mr. Lally will ask you
23 questions. Then I'll hear from the lawyers and
24 then I'll take a break. And you'll get a break
25 before we come back. Okay?

1 THE WITNESS: Yes.

2 THE COURT: Did you have a lawyer present?

3 THE WITNESS: No, I do not.

4 THE COURT: Okay. Are they both on the --

5 MR. JACKSON: I separated them for the Court's
6 convenience.

7 THE COURT: Okay. So let's mark then each for
8 identification.

9 MR. JACKSON: The one I'm holding in my right
10 hand --

11 THE COURT: Bring it up.

12 MR. JACKSON: -- I'll call Advantage.

13 THE COURT REPORTER: That will be "GG" for
14 Identification.)

15 (Whereupon, thumb drive with Advantage video was
16 entered and marked Exhibit "GG" for
17 Identification.)

18 THE COURT: Thank you.

19 MR. JACKSON: The one in my left hand, with
20 the Court's permission, I'll call this Bang Bang.

21 THE COURT REPORTER: That will be "HH" for
22 Identification, Your Honor.

23 THE COURT: All right. Thank you.

24 (Whereupon, thumb drive with KO Bang Bang video was
25 entered and marked Exhibit "HH" for

1 Identification.)

2 THE COURT: All right. So play "GG" first,
3 please.

4 MR. JACKSON: Yes, Your Honor.

5 (Whereupon, the video is played.)

6 THE COURT: Okay. And the next one, please?

7 (Whereupon, the video is played.)

8 MR. JACKSON: May I inquire, Your Honor?

9 THE COURT: Yes.

10 MR. JACKSON: I am going to take those two
11 videos one at a time. I'm going to call one the
12 Advantage voice and one the Bang Bang video.

13 VOIR DIRE EXAMINATION

14 BY MR. JACKSON:

15 Q For purposes of my questioning, Mr. Albert,
16 specifically as regarding the Advantage voice video,
17 did you recognize it?

18 A Yes.

19 Q How did you recognize it?

20 A What do you mean by that?

21 Q How do you recognize it? Is that you?

22 A Yes.

23 Q Okay. When was that taken?

24 A Maybe my sophomore year in high school.

25 Q Where were you?

1 A I don't remember.

2 Q When you say your sophomore year in high
3 school, that was about three or four years ago?

4 A Yeah, around.

5 Q You indicated on cross-examination you've
6 never been in a fight?

7 A No.

8 Q Indicating that you have no violent tendencies
9 and no violent proclivities, correct?

10 A No.

11 Q What were you saying on the video?

12 A That I would beat them up.

13 Q Did you say that you would beat them up or did
14 you say, I will fuck you up?

15 A I said, I will F you up.

16 Q No. You didn't say, I will F you up. What
17 did you actually say?

18 A That I would fuck them up.

19 Q You also said something about beating
20 somebody's ass, right?

21 A Correct.

22 Q What did that mean?

23 A That I would beat them up.

24 Q So when you said "will fuck you up" and "I
25 will beat your ass," was that a friendly invitation?

1 A No.

2 Q That was a threat, correct?

3 A I don't know if I could call it a threat.

4 Q You don't?

5 A I'm not sure.

6 Q Someone walks up to you. I'm not going to do
7 it. But, if someone did, walked up to you and said, I
8 will fuck you up, I will beat your ass, you wouldn't
9 take that as a threat?

10 A If they walked up to me, yeah.

11 Q If they didn't walk up and just shouted it
12 across the street and stood there and said, I will fuck
13 you up, I will beat your ass, that's not a threat?

14 A I'm not sure.

15 Q Yeah. I think you are sure, sir.

16 THE COURT: All right. So that I'll strike if
17 the Commonwealth is standing up.

18 BY MR. JACKSON:

19 Q Were you threatening these Advantage boys or
20 guys, whoever they are?

21 A Yeah, kinda.

22 Q Were you threatening them with violence?

23 A Kinda, yeah.

24 Q Yeah. In the second video, you said "fuck
25 you" a number of times. And then you said, pull up.

1 K0. Bang Bang, right?

2 A Correct.

3 Q Explain that to me.

4 A I'm not sure. Like explain what I said?

5 Q Was that a threat?

6 A Yeah.

7 Q Pull up, bitch, right?

8 A Yeah.

9 Q Who are you talking to?

10 A Those same Advantage kids.

11 Q Got it. So you're threatening them yet again
12 a second time?

13 A Yeah.

14 Q What does "pull up" mean?

15 A Like come by.

16 Q Yeah, meaning get over here, right?

17 A Yup.

18 Q Because when you do, I'm going to fuck you up,
19 right?

20 A Yeah.

21 Q Meaning I'm going to fight you and I'm going
22 to put you down. Correct?

23 A Correct.

24 Q That was your threat to them?

25 A Correct.

1 THE COURT: Can we get a time on the second
2 one?

3 MR. JACKSON: Of course.

4 BY MR. JACKSON:

5 Q When was the second one, the "Bang Bang"
6 threat, made? Before or after the Advantage Boys?

7 A I'm not sure.

8 Q After?

9 A It might have been the same night. I really
10 don't know.

11 Q Well, you're dressed completely differently.
12 So it's probably not the same night. You'd agree with
13 that?

14 A I could have changed my shirt. I do that
15 often.

16 Q Okay. So you changed your shirt and on the
17 same night you just decided to threaten the guys twice?
18 Is that what you're saying?

19 A Maybe.

20 Q But you're not sure?

21 A I'm not sure.

22 Q Was it around the same time frame?

23 A Around, yeah.

24 Q The fact of the matter is, Mr. Albert, you do
25 like to fight, don't you?

1 A Nope.

2 Q The fact of the matter is you showed up at
3 another hearing, at another proceeding, to testify, and
4 you showed up with busted knuckles then, too, didn't
5 you?

6 A I do not remember.

7 Q July 27th, 2023. Do you remember being at
8 another hearing?

9 A Yes.

10 Q Do you remember being questioned by some
11 attorneys?

12 A Yes.

13 Q Do you remember the question about the
14 condition of your fist literally at the hearing?

15 A Yeah.

16 Q It was obvious to the person that was
17 questioning you that you had an injury to your fist,
18 correct?

19 MR. LALLY: Objection.

20 THE COURT: So that's sustained.

21 MR. JACKSON: I'll rephrase that. My
22 apologies, Your Honor.

23 BY MR. JACKSON:

24 Q You were asked questions by the questioner
25 about the condition, the physical condition, of your

1 fist, weren't you?

2 A Correct.

3 Q And you claimed at that time -- well, let me
4 back up for a second and ask a different question.

5 They were asking because you had open injuries
6 on your right knuckles yet again, didn't you?

7 A Correct.

8 Q You said, ah, I must have been hitting a heavy
9 bag, right?

10 A Yeah.

11 Q Boxing again?

12 A Hitting the bag, yeah.

13 Q Just working out, right?

14 A Yup.

15 Q You didn't have any injuries on the left hand,
16 though, did you?

17 A No.

18 Q How many times have you hit a heavy bag?

19 A I'm not sure.

20 Q How many times have you worked out with a
21 heavy bag? That's an unfair question. I'll ask it
22 better.

23 How many times have you worked out on a heavy
24 bag?

25 A I'm not sure.

1 Q When you work out on a heavy bag, you wrap
2 your hands, don't you?

3 A I do not, no.

4 Q I see. So only your right hand gets injured
5 over and over and over and over again, not your left
6 hand?

7 A I'm not sure.

8 Q Even if you're punching the bag with both
9 hands?

10 A I'm not sure.

11 Q Yet again, you're right handed, aren't you?

12 A Yes.

13 Q So when you throw a haymaker, your hardest
14 punch, that's with your right fist, right?

15 MR. LALLY: Objection.

16 THE COURT: I'll allow it.

17 BY MR. JACKSON:

18 Q Is that right?

19 A I'd say they are equal. I don't know.

20 MR. JACKSON: That's all I have.

21 THE COURT: All right. Mr. Lally?

22 MR. LALLY: Thank you, Your Honor.

23 BY MR. LALLY:

24 Q Mr. Albert -- I'm sorry. I'm just going to
25 let the siren go by.

1 So when those videos were made, you were a
2 sophomore in high school; is that right?

3 A Around that, yeah.

4 Q How old were you when you were a sophomore in
5 high school?

6 A Sixteen. Sixteen years old.

7 Q So that would have been at least a couple of
8 years before January of 2022, correct?

9 A Yeah.

10 Q And, as far as within those videos -- well, as
11 far as timing, so those videos were around the same
12 time, the same time period within your sophomore year?

13 A Correct.

14 Q And relatively close to each other; is that
15 correct?

16 A Correct.

17 Q And who or what is an Advantage boy?

18 A It's a club hockey team.

19 Q And what, if any, relationship did you have
20 with that club hockey team?

21 A None.

22 Q And so as far as what videos you made and
23 sending, were there any videos from that group that
24 were made and sent to you?

25 A Text messages.

1 Q And, with regard to those text messages,
2 generally speaking, what do they say?

3 A Just name calling me and my friends, calling
4 us like pussies and stuff like that.

5 Q So this was sort of a back and forth; is that
6 correct?

7 A Correct.

8 Q And do you even play hockey?

9 A Nope.

10 Q And were these people around your age at that
11 time?

12 A Yeah.

13 Q And were they kids from the same town or a
14 different town?

15 A I don't even know where they are from.

16 Q Did you even really know these kids or what
17 their names were or anything like that?

18 A Not at all.

19 Q And was there ever any sort of physical fight
20 or even a physical interaction with these other kids?

21 A Never.

22 Q Did you ever even meet them face to face?

23 A Never.

24 Q And, with regard to Mr. O'Keefe, your neighbor
25 who lived at the top of the street when you lived at 7

1 Meadows, did you ever threaten him?

2 A Never.

3 Q Did he ever threaten you?

4 A Never.

5 Q Did you ever have any sort of back-and-forth
6 exchange similar to what was up on the screen?

7 A Never.

8 MR. LALLY: I have nothing further, Your
9 Honor.

10 THE COURT: Okay.

11 MR. JACKSON: Your Honor, very briefly?

12 THE COURT: Okay.

13 BY MR. JACKSON:

14 Q You indicated, Mr Albert, that this was your
15 sophomore year in high school, but you were asked that
16 exact same question under oath the time frame of these
17 videos in that other hearing, weren't you?

18 A I believe so, yes.

19 Q And you indicated under oath in that hearing
20 that it looked like it was your junior or senior year
21 in high school, correct?

22 A Maybe. I'm not sure --

23 Q You're not sure.

24 A -- exactly what I said.

25 Q Your senior year would have been what year,

1 sir?

2 A 2021-22.

3 Q The same year John O'Keefe died?

4 A Correct.

5 MR. JACKSON: May I have a moment, Your Honor?

6 THE COURT: Yes.

7 MR. JACKSON: That's all I have at this time,
8 Your Honor.

9 THE COURT: All right. I will hear you.

10 MR. JACKSON: Your Honor, if we could make the
11 argument outside the presence of the witness?

12 THE COURT: Yes. I'm sorry. I'm going to ask
13 you to step out of the courtroom.

14 (Whereupon, the witness exits the courtroom.)

15 MR. JACKSON: Thank you, Your Honor.

16 THE COURT: He's not gone yet.

17 MR. JACKSON: Oh, I'm sorry.

18 THE COURT: Okay. Yes. They cannot hear in
19 that back room.

20 MR. JACKSON: No problem. I appreciate you
21 giving us the opportunity.

22 Your Honor, it's very clear that these videos
23 are highly, highly relevant given the sanitized
24 testimony that this witness has tried to present to
25 this jury. He has indicated that he's never been

1 in a fight. He doesn't have any violent
2 proclivities. He doesn't have any violent
3 tendencies. It's not in his countenance to do
4 this. Mr. Lally opened this door.

5 THE COURT: But you only got that through the
6 voir dire. Okay?

7 MR. JACKSON: Understood.

8 THE COURT: So the violent tendencies only
9 came in through the voir dire.

10 MR. JACKSON: Well, that's not true. In front
11 of the jury, he said, I've never been in a fight.

12 THE COURT: Okay. But that specific question,
13 you said "violent tendencies," it was unobjected
14 to. But that was voir dire.

15 MR. JACKSON: Understood. Understood.

16 Mr. Lally clearly opened this door yesterday.
17 He presented a photograph or a series of
18 photographs with this witness's family, his arm
19 draped over his aunt. He's with his mom, looking
20 very family oriented, et cetera.

21 And Mr. Lally went further than that and
22 specifically said, I want you to take a look at
23 your face and your hands and your extremities. Do
24 you see anything unusual or odd about that.

25 That's why I believe the Court allowed, based

1 on the testimony today, allowed the photograph in
2 February of 2022 of the actual photo that cannot be
3 manipulated -- it's in the hands of a third party,
4 of the busted and injured knuckles on this
5 witness's right hand.

6 He then said, I've never been in a fight.
7 Those two videos belie that testimony. There is no
8 way to look at those two videos and say this is not
9 relevant to the issue of whether or not he has been
10 in a fight.

11 THE COURT: But tell me how whether he's been
12 in a fight is relevant to an issue in this case.
13 That's what you have to do.

14 MR. JACKSON: Because the police should have,
15 the Massachusetts State Police should have, if they
16 were doing their due diligence, they should have
17 investigated this young man. They should have
18 investigated every single person that was in that
19 house, in or around the home where John O'Keefe was
20 found, the Albert home, and they didn't. They did
21 nothing to investigate whether there was someone in
22 the house who tended to fight, who wanted to get in
23 physical altercations, who had a propensity to get
24 into physical altercations, who was a fighter by
25 nature, who threatened to fight, who threatened

1 violence.

2 That's what this young man has indicated he
3 does constantly. I'm surprised he didn't show up
4 in this hearing with busted knuckles.

5 THE COURT: So does this go to your third-
6 party culprit evidence?

7 MR. JACKSON: It goes to both. It certainly
8 goes to *Bowden*, but, yes, it also goes to our
9 third-party culprit defense, as well. This is a
10 focus of -- I believe this should be a focus of the
11 jury's attention in terms of is there a third party
12 who could have done this, the evidence points to
13 that may have done this. Absolutely. This
14 evidence, what we now have, points directly in --
15 it's focused in that direction.

16 So yes, both. It should have been
17 investigated and Colin Albert is somebody that the
18 jurors should focus their opinion on or their
19 attention on to determine whether or not he could
20 have or was involved in the death of John O'Keefe.

21 THE COURT: All right. Mr. Lally?

22 MR. LALLY: Yes, Your Honor. The Commonwealth
23 would submit it did not open the door in reference
24 to this, showing a photograph of someone and what
25 they physically look like. There was no

1 suggestion. The only questions that were asked
2 about fighting or anything of that nature were by
3 counsel. So if counsel thinks he opened his own
4 door, I don't think that's exactly how that works.

5 This is nothing more than rank speculation.
6 It bears no relevance whatsoever to this case.
7 You are talking about something that is dated at
8 least a year if not two prior to the incidents in
9 this case.

10 THE COURT: But what if it says, as
11 Mr. Jackson pointed out the prior testimony in his
12 senior year, which, of course, is much closer?

13 MR. LALLY: Well, I think even assuming that,
14 as far as relevance is concerned, Your Honor, there
15 is no evidence here of a fight at all. There is no
16 evidence that this witness was even present at the
17 house at the same time as the victim. There is no
18 evidence of any animus between this witness and the
19 victim. There is no evidence whatsoever, as I
20 stated, that he was even present at the same place
21 at the same time on the night with John O'Keefe, on
22 the night that John O'Keefe was killed.

23 There is no evidence from even these videos of
24 any physical altercation having taken place. So
25 whatever juvenile beef that he and his friends had

1 with individuals from another town, there is no
2 evidence whatsoever of physical altercation. There
3 is no evidence that there is a physical altercation
4 even in this case.

5 So to allow counsel to introduce this surely
6 for, you know, prejudicial reasons and to invite
7 the jury to speculate as to what it is, it
8 essentially does nothing but divert the jury's
9 attention from the facts of the case and what the
10 evidence in the case is. More so, there is no
11 evidence of anything in this case.

12 THE COURT: All right.

13 MR. JACKSON: Your Honor, may I be heard
14 briefly?

15 THE COURT: Yes.

16 MR. JACKSON: In terms of evidence of a fight,
17 I don't know what Mr. Lally is talking about. He
18 says there is no evidence of a fight in this case.
19 John O'Keefe looks like he had been beaten to
20 death. He's got two black eyes, a laceration over
21 his right eye, a laceration over his nose, a giant
22 wound on the back of his head and he doesn't look
23 like he was hit by a car. He looks like he was in
24 a physical altercation. It's as plain as the nose
25 on your face, and we have witnesses who are going

1 to propound that evidence and present that
2 evidence.

3 So Mr. Lally and the Commonwealth can take
4 whatever position they want to. If they think
5 those injuries are consistent with being hit by a
6 6,000 pound truck, they can knock themselves out.
7 That is not the state of the case and they don't
8 get to dictate the state of the facts. The facts
9 speak for themselves.

10 Second, with regard to whether or not
11 Mr. Albert was home that night or at the home that
12 night, in a position to be able to engage in a
13 physical altercation which, by the way, takes about
14 that long (indicating), that is predicated on his
15 own family members covering for him. Every one of
16 the witnesses who testified basically are friends
17 and families of the Alberts. And keep in mind,
18 Your Honor, I don't think it's lost on anybody that
19 Colin Albert was hidden, specifically and
20 intentionally hidden, from all of law enforcement
21 for the first several months of this investigation.
22 Nobody, nobody, was willing to even say he was at
23 the house. That is highly, highly suspicious.

24 Given the gravity of what we have now, I would
25 take issue with one thing Mr. Lally said. He said

1 this diverts the jury's attention. I would agree
2 it diverts their attention. It diverts their
3 attention to somebody who possibly could be
4 involved with this who was not properly
5 investigated. And I'll submit.

6 THE COURT: Okay. So may I have those two
7 flash drives, please?

8 MR. JACKSON: I believe they are in the
9 possession of --

10 THE COURT: Yes. No. I was asking Madam
11 Court Reporter.

12 All right. Why don't we take a 15-minute
13 recess. I'll look at these and I will come out.

14 (Whereupon, there was a brief recess taken.)

15 (Court resumes.)

16 (Defendant present. Jury present.)

17 THE COURT: I actually will see counsel at
18 sidebar.

19 (Whereupon, there was a sidebar conference as
20 follows:)

21 THE COURT: So separate and apart from whether
22 the Commonwealth opened the door, I really
23 appreciate the opportunity to have been able to
24 view these a couple of times. With the record
25 before me, I am going to let it in. The

1 Commonwealth's objection is noted.

2 MR. JACKSON: Thank you.

3 THE COURT: Okay.

4 (Whereupon, the sidebar conference concluded.)

5 THE COURT: The witness can take the stand,
6 please.

7 THE CLERK: Sir, I remind you, you are still
8 under oath.

9 THE COURT: Madam Court Reporter has the two
10 marked for identification. Are you moving to
11 introduce those into evidence at this point?

12 MR. JACKSON: With the Court's permission,
13 yes.

14 THE COURT: Okay. So let's wait a minute.
15 (Whereupon, thumb drive of Advantage video
16 (previously "GG") was entered and marked Exhibit
17 No. 86 in evidence.)

18 THE COURT REPORTER: "GG" will be Exhibit 86,
19 Your Honor.

20 THE COURT: Thank you.

21 THE COURT REPORTER: And "HH" will be Exhibit
22 87.

23 THE COURT: Thank you.

24 (Whereupon, thumb drive containing KO, Bang Bang
25 video (previously "HH") was entered and marked

1 Exhibit No. 87 in Evidence.)

2 MR. JACKSON: May I inquire?

3 THE COURT: Yes.

4 MR. JACKSON: Thank you.

5 CONTINUED CROSS-EXAMINATION

6 BY MR. JACKSON:

7 Q Mr. Albert, before we took a break, you had
8 mentioned that you've never been in a fight?

9 A Correct.

10 Q Do you stand by that testimony?

11 A Correct.

12 Q I'd like you to take a look at a video that's
13 been marked for -- sorry. It's evidence No. 86. I'm
14 going to play this short video for you and then I'm
15 going to ask you a couple of questions.

16 (Whereupon, the video is played.)

17 Q Did you recognize what was depicted in that
18 video?

19 A Yes.

20 Q Who was that?

21 A Me.

22 Q Approximately when was that video taken?

23 A Around my sophomore year in high school.

24 Q Sophomore year or senior year in high school?

25 A I'd say around my sophomore year in high

1 school.

2 Q Why do you say your sophomore year when you
3 previously -- well, let me ask it a different way.

4 Did you previously testify at a different
5 hearing back in July of 2023?

6 A Yes.

7 Q You were asked about this video, weren't you?

8 A Yes.

9 Q You asked about another video at the same
10 time, correct?

11 A Correct.

12 Q And, in that hearing, you said you believed
13 that that was taken closer to your junior year or
14 senior year in high school, correct?

15 A Correct.

16 Q And that was under oath?

17 A Correct.

18 Q The same oath that you took here?

19 A Correct.

20 Q Closer in time to the events in question.
21 And, at that time, you said your junior year or senior
22 year in high school, correct?

23 A Correct.

24 Q If it was your senior year in high school,
25 what year would that have been?

1 A '21-22. So 2021-2022.

2 Q Going into 2022, correct?

3 A Yes.

4 Q The same year that John O'Keefe passed away?

5 A Correct.

6 Q What did you mean by "I'm going to fuck you
7 up"?

8 A That I was going to beat them up.

9 Q Actually, you didn't say "beat them up." You
10 said, I'm going to beat your ass, didn't you?

11 A Yes.

12 Q That was a threat, wasn't it?

13 A Yes.

14 Q It was a threat directed at some other
15 individuals with whom you had some sort of a beef or a
16 problem?

17 A Correct.

18 Q And your resolution of that problem is, I'm
19 gonna fuck you up. I'm gonna beat your ass, right?

20 A Correct.

21 Q But you've never been in a fight?

22 A Never.

23 MR. JACKSON: Your Honor, with the Court's
24 permission, could we play evidence No. 87?

25 THE COURT: Yes.

(Whereupon, the video is played.)

MR. JACKSON: Lights? May I inquire?

THE COURT: Yes.

BY MR. JACKSON:

Q Mr. Albert, who was that in that video?

A Me.

Q Was that taken around the same time?

A Yes.

Q You indicated, you're a bitch, bro, right?

A Correct.

Q Was that a threat?

A Yes.

Q More of an insult?

A Yeah. More of an insult.

Q Calling someone out?

A Yup.

Q Making them feel bad?

A Yeah.

Q Prompting them to maybe fight?

MR. LALLY: Objection, Your Honor.

THE COURT: Yes. Ask that question differently, Mr. Jackson.

MR. JACKSON: Sure.

BY MR. JACKSON:

Q You also called him a pussy, didn't you?

1 A Correct.

2 Q A derogatory comment?

3 A Correct.

4 Q And then you said, KO, bang bang, right?

5 A Yes.

6 Q What does KO mean?

7 A Knockout.

8 Q And what does bang bang mean?

9 A I'm not sure, honestly.

10 Q You were just talking about knocking somebody
11 out?

12 A Correct.

13 Q And the bang bang just sort of flowed?

14 A Exactly.

15 Q Was that a threat?

16 A Yes.

17 Q And these threats that we've just talked about
18 that we've just seen, these are threats of physical
19 violence, right?

20 A Correct.

21 Q You're not threatening to hurt their feelings
22 or send them a mean text, right?

23 A No.

24 Q You're threatening to kick their ass, right?

25 A Correct.

1 Q To get physical, right?

2 A Yes.

3 Q To ball up your fists and beat the shit out of
4 him?

5 MR. LALLY: Objection.

6 THE COURT: Can you answer that? Would you
7 answer that, please?

8 THE WITNESS: Yeah. Can you repeat the
9 question?

10 BY MR. JACKSON:

11 Q I probably shouldn't. You were threatening to
12 ball up your fists and beat the heck out of him?

13 MR. LALLY: Objection.

14 THE COURT: I'll allow it. Is that what you
15 were threatening to do?

16 THE WITNESS: Yes.

17 BY MR. JACKSON:

18 Q When you testified in the separate proceeding
19 in July of 2023, you actually showed up for questioning
20 live, correct?

21 A Yes.

22 Q And you showed up at the time in July of 2023
23 with your knuckles busted up again, didn't you?

24 A Correct.

25 Q And you were asked about your knuckles at that

1 time, correct?

2 A Correct.

3 Q At that time, you said, oh, no. I didn't fall
4 down on black ice and slip and break my fall with my
5 knuckles like you've said here. You said, oh, I hit a
6 heavy bag and busted my knuckles up on a heavy bag,
7 right?

8 A Correct.

9 Q So that heavy bag was you practicing boxing,
10 right?

11 A It was me getting cardio. Yes.

12 Q Which is in a form of fighting?

13 A In a form, yeah.

14 Q Punching a bag?

15 A Yup.

16 Q That's how you choose to do your cardio?

17 A Sometimes.

18 Q And you're right-handed?

19 A Yes.

20 Q And it was your right hand that was busted up?

21 A Correct.

22 Q So when you throw your hardest punch, that's
23 with your right hand, isn't it?

24 A I'm not sure. I'd say they are equal.

25 Q You're equally strong with both hands?

1 A I'd say so.

2 Q So, in your words, you could fuck somebody up
3 with either hand, right?

4 MR. LALLY: Objection, Your Honor.

5 THE COURT: Can you answer that?

6 THE WITNESS: No. I'm not saying that.

7 MR. JACKSON: That's all I have, Your Honor.

8 THE COURT: Okay. Mr. Lally?

9 MR. LALLY: Thank you, Your Honor. Your
10 Honor, just before I begin, may we approach?

11 THE COURT: Okay.

12 (Whereupon, there was a sidebar conference as
13 follows:)

14 MR. LALLY: I just wanted to clarify with the
15 Court based on my understanding of the question, I
16 believe the door has been opened as far as
17 harassment with this witness as well, and I intend
18 to go down that road.

19 THE COURT: Okay. Do you want to point to
20 specifics?

21 MR. LALLY: I think specifically what was
22 asked as far as the timing, as far as you never
23 talked about this case with family or friends for
24 two and a half years and then you indicated "no"
25 just more recently. And I think in order to

1 explain sort of why that is, it is in reference to
2 the harassment this witness has sustained.

3 THE COURT: What do you say, Mr. Jackson?

4 MR. JACKSON: With all due respect, that
5 is a ridiculous argument for opening the door.
6 Mr. Lally is desperate to get anything he can in
7 about these witnesses being harassed. I did not
8 come anywhere close to asking any questions,
9 especially about yesterday. My questioning was
10 tight and thoroughly narrowly tailored to issues
11 concerning this witness's credibility. And I
12 questioned based on the door that opened of his
13 violent tendencies. I didn't come anywhere near
14 asking a question about whether or not he had been
15 harassed, whether or not he had been contacted by
16 the police based on harassment. I asked him have
17 you been -- I have to be able to ask, we have to be
18 able to ask, how many times have you spoken to the
19 police about this case, this specific case, not
20 harassment. And that's what I asked.

21 THE COURT: What do you intend to ask? I do
22 have in my notes -- at the very beginning -- I
23 wrote down that I believe the door was opened,
24 Mr. Jackson. Frankly, I was surprised. It is in
25 the beginning when you went through the whole

1 litany of the preparation, and just a couple of
2 other things that I didn't get to write down.
3 "You've been thinking about this case. How long
4 have you been thinking about this case?" And he
5 said, since people started writing about me on the
6 Internet, which was in response to the question as
7 phrased.

8 But tell me what you intend to get into,
9 Mr. Lally.

10 MR. LALLY: Just following up on that, Your
11 Honor, as far as people writing about you on the
12 Internet, what was that, when was that, what did
13 that entail.

14 THE COURT: All right. I am going to give him
15 some headway on that. Like I said, frankly, I was
16 surprised.

17 MR. JACKSON: We are getting to a point, Your
18 Honor, where we can't ask anything. We're being
19 hamstrung because Mr. Lally is going to come up
20 with -- I'll say, what color is the sky? And he's
21 going to say, well, he said blue. He felt blue in
22 years past because he's been harassed -- it's such
23 a square peg in a round hole. We are getting to
24 the point that we can't defend this case without
25 fear that --

1 THE COURT: You just have to be careful and
2 skilled, counsel.

3 MR. JACKSON: I think I am careful and I think
4 I am skilled. I didn't come anywhere close to
5 opening the door, Your Honor.

6 THE COURT: Unfortunately, I believe you did.
7 So I am going to give him a little leeway on this.
8 (Whereupon, the sidebar conference concluded.)

9 MR. LALLY: May I proceed, Your Honor?

10 THE COURT: Yes.

11 REDIRECT EXAMINATION

12 BY MR. LALLY:

13 Q Mr. Albert, just to be clear, Alli McCabe is
14 not your cousin, correct?

15 A Correct.

16 Q Okay. She's a friend of yours who you have
17 relatives in common; is that correct?

18 A Correct.

19 Q Now, when you and I and other individuals met
20 prior to your testimony in this case, it was just one
21 time; is that correct?

22 A Correct.

23 Q And did we talk about something called
24 sequestration?

25 A Not that I remember.

1 Q Did we talk about having conversations with
2 other witnesses while the case was pending or going on?

3 A No.

4 Q Now, you testified when you were asked on
5 cross-examination that you haven't had any
6 conversations with any other witnesses, you haven't
7 watched any coverage, you haven't done any of those
8 things, correct?

9 A Correct.

10 Q And was that at my instruction?

11 A No.

12 Q Is that something that you've done at any
13 point in time as far as talking to any other witnesses,
14 including your parents?

15 A No.

16 Q Now, you were asked some questions on cross-
17 examination about you family's relationship sort of
18 with the Proctor family, correct?

19 A Correct.

20 Q And, taking the Proctor family as it was put,
21 as sort of an entity, what I'm going to ask you about
22 is purely about Trooper Michael Proctor.

23 How many times have you seen him in your life?

24 A Maybe five, six times.

25 Q And when about would those be and what would

1 the nature of those interactions be?

2 A Other than when I got interviewed last time
3 with Trooper Proctor and one of his partners, other
4 than that, I didn't see him for years, I want to say,
5 'cause I was a young kid.

6 Q And, when you were a young kid, just so we are
7 clear, as far as "young," how young is young?

8 A I maybe saw him -- I could have seen him at
9 like a football game or something. But, other than
10 that, pretty young. Like 12, 11, 13.

11 Q And whereabout or what was the context you
12 would have seen him? Was it you and him together or
13 was it a group setting, family? How would you have
14 come into contact with him?

15 A We've been over the grandmother's house a
16 couple of times but that's pretty much the only time I
17 would see him.

18 Q Now, as far as the photograph that you were
19 shown as far as a wedding was concerned, you were a
20 ring bearer in that wedding?

21 A Correct.

22 Q That was over 10 years ago, you said?

23 A Yes.

24 Q About how old would you have been in that
25 particular photograph or in that particular wedding?

1 A If I had to guess, eight or nine, maybe.
2 Around there.

3 Q Do you have any independent memory of that
4 wedding or anything about that wedding?

5 A None.

6 Q And, as far as your family being close, again,
7 sort of the Proctor family as an entity, is your family
8 close with all of the Proctors or is your family close
9 with Courtney Proctor? Is your family close with
10 Michael Proctor?

11 A Mostly just like my aunt, and my mum's
12 friendly with Courtney, I'd say, not really close with
13 Michael.

14 Q You were asked some questions about the text
15 messages that were up on the screen yesterday and up on
16 the screen today as sort of a gap between January 28th
17 and February; is that correct?

18 A Correct.

19 Q Now, you indicated that there were other means
20 by which you would have communicated with your friend,
21 Alli McCabe; is that correct?

22 A Correct.

23 Q Is that consistent with -- is that only
24 Alli McCabe, or is that consistent with other friends
25 that you would communicate with?

1 A All my friends.

2 Q So you would sort of switch between call,
3 text, Snapchat, other apps, things like that?

4 A Exactly.

5 Q And at the top of that screen were the text
6 messages regarding picking you up from 34 Fairview on
7 January 28th or 29th, correct?

8 A Correct.

9 Q Do you have any idea when the last time was,
10 the text before that? Was it days, weeks, month?

11 A I'm not sure.

12 Q That period of sort of January 28th into
13 February, is that -- how would you characterize that?
14 Is that a normal gap between times that you would have
15 text communications with Alli McCabe?

16 A On a message, yeah. I would say so, yeah.

17 Q And from the photographs that you were shown
18 yesterday during your direct examination when I was
19 asking you questions, those were photographs from
20 February 11th of 2022, correct?

21 A Correct.

22 Q And Ms. McCabe was present at the house for
23 your Cousin Jack coming home from the Marine Corps, as
24 well?

25 A Correct.

1 Q So you saw her on February 11th, correct?

2 A Yes.

3 Q Now, the other photographs that you were shown
4 today at some sort of bar or establishment, were those
5 taken before or after the time at your uncle's house
6 when your Cousin Jack came home from the Marines?

7 A After.

8 Q And after by days, weeks, if you know?

9 A Weeks.

10 Q Now, with regard to questions you were asked
11 about injuries to your hand, those are two separate
12 incidents, one in February when you slipped on ice; is
13 that correct?

14 A Correct.

15 Q And one in July when you had struck a heavy
16 bag, correct?

17 A Correct.

18 Q And, when you struck a heavy bag and got sort
19 of injuries on your hands, were you wearing anything on
20 your hand when you hit the heavy bag?

21 A Nothing. No.

22 Q Have you received any sort of training in
23 boxing, taken classes, anything like that?

24 A Never.

25 Q Okay. So it's something you do as part of

1 your workout, correct?

2 A Correct.

3 Q And you're an athlete, correct?

4 A I'd like to say so, yeah.

5 Q You played sports in high school, correct?

6 A Yeah.

7 Q And, at least at the beginning of college, you
8 played sports in college, correct?

9 A Correct.

10 Q Now, you were asked about things about that
11 February 26 photo at, I forget, was it Fenway Johnnies?
12 Is that where it was?

13 A Correct.

14 Q And you were asked about control over the
15 photograph, correct?

16 A Say that again?

17 Q You were asked different questions about your
18 control over what you could do or alter with respect to
19 the photograph, correct?

20 A Yes. Correct.

21 Q Ultimately, though, you were in control about
22 whether or not you were photographed, correct?

23 A Yes.

24 Q Nobody forced you to go up and pose with your
25 friends or anything like that?

1 A No.

2 Q Now, as far as those videos that you were just
3 shown, how old were you?

4 A Around 16. I'd say around 16 years old.

5 Q So you believe it was sometime in your
6 sophomore year of high school?

7 A Yes. That's what I believe.

8 Q And so that would have been a couple of years
9 before your senior year of high school which you were
10 in in January of 2022, correct?

11 A Correct.

12 Q And this video as far as -- do you recall who
13 you were referencing in those videos?

14 A Advantage Club Hockey Team.

15 Q So a club hockey team. Were they about the
16 same age as you?

17 A Yes.

18 Q And did you know any of those people?

19 A No.

20 Q The club hockey team, was that within the same
21 town as you were?

22 A I'm not sure.

23 Q Did you play hockey?

24 A No.

25 Q At any point in time in high school?

1 A Never.

2 Q And was this just you sending them videos or
3 was this some sort of argument or something going back
4 and forth?

5 A It was an argument going back and forth.

6 Q So what, if anything, did you or any of your
7 friends receive in regards to -- from that club hockey
8 team?

9 A We received texts, like being names called,
10 like calling pussy and things like that.

11 Q So do you recall which came first as far as
12 the texts or the video?

13 A I do not recall.

14 Q But the text message that you received from
15 this club hockey team, were they similar in nature to
16 the videos that you posted?

17 A Correct.

18 Q Do you recall what the argument was about with
19 this other group of kids from this club hockey team?

20 A Yeah. It was the girls in our friend group, a
21 couple of the girls in our friend group, like hung out
22 with them a few times. So like all my guy friends got
23 a little salty about it. So that's why we kind of sent
24 videos back and forth.

25 Q So you were teenage kids, arguing about girls,

1 correct?

2 A Exactly.

3 Q And, at any point in time, did your friend
4 group and this club hockey team ever meet up at all?

5 A Never.

6 Q Any sort of physical altercation or anything
7 like that?

8 A No.

9 Q You indicated that you've never really been in
10 a fight except for with your brothers, correct?

11 A Correct.

12 Q And, when you would get in a fight with your
13 brothers, how old were you then?

14 A Younger, I'd say. Yeah. Younger.

15 Q Younger like as young as you were when you
16 were a ring bearer in somebody's wedding?

17 A Yeah.

18 Q Now, with regard to John O'Keefe, your
19 neighbor who lived a couple doors down, did you ever
20 threaten John O'Keefe?

21 A Never.

22 Q Did John O'Keefe ever threaten you?

23 A Never.

24 Q Did you ever get in an argument about girls?

25 A No.

1 Q Any animus or any conflict that you can recall
2 ever between yourself and Mr. O'Keefe?

3 A Never.

4 Q Now, you were asked some questions on cross-
5 examination regarding whether or not you've been
6 thinking about this case for the last two and a half
7 years. Do you recall that?

8 A Yes.

9 Q And you indicated that you had not, correct?

10 A Uh-huh. Correct. Sorry.

11 Q And you had indicated in your testimony in
12 response to that questioning essentially not until
13 people were writing things about you on the Internet,
14 correct?

15 A Correct.

16 Q Can you expound about that? Can you explain
17 to the jury sort of when that occurred and what were
18 the things that were being written about you on the
19 Internet?

20 A I'd say about a little over a year it started
21 when people on Twitter, Instagram, social media were
22 just coming at my family, calling us murderers,
23 harassing us, showing up to our doorsteps, our sports
24 games. I mean, we couldn't leave the house without
25 people taking pictures of us, and it's very terrible.

1 Q And how long has that gone on for?

2 A The past year and change, a couple months.

3 The past year and a couple months, I'd say.

4 Q To be clear, that night that you were at 34
5 Fairview Road at your uncle's house, January 28th, into
6 the 29th, at any point in time did you see John O'Keefe
7 at that house come into that house, around that house,
8 at any point in time that you were there?

9 A Never.

10 MR. LALLY: Nothing further.

11 MR. JACKSON: Nothing, Your Honor. Thank you.

12 THE COURT: Okay. Mr. Albert, you're all
13 set. I think that piece of paper goes back to
14 Mr. Jackson. Did you leave something on the
15 witness stand?

16 MR. JACKSON: Thank you, Your Honor.

17 (Whereupon, the witness is excused.)

18 THE COURT: All right. Mr. Lally, your next
19 witness?

20 MR. LALLY: Yes, Your Honor. The Commonwealth
21 would call Mr. Matthew McCabe to the stand.

22 THE COURT: All right.

23 Whereupon,

24 MATTHEW MC CABE

25 having been first duly sworn, was examined and

1 testified under oath as follows:

2 THE COURT: All right, Mr. Lally. Whenever
3 you're ready.

4 MR. LALLY: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. LALLY:

7 Q Good morning, sir.

8 A Good morning.

9 Q Would you please state your name and spell
10 your last name for the jury, sir?

11 A Matthew McCabe, M-C-C-A-B-E.

12 Q And where do you live, sir?

13 A Canton, Massachusetts.

14 Q And how long have you lived in Canton?

15 A It will be 20 years this coming June.

16 Q And, during the time that you have lived in
17 Canton, have you lived at the same place or have you
18 lived at different places?

19 A Different place.

20 Q So where do you live currently and how long
21 have you lived there?

22 A Currently, it will be 10 years this June.

23 Q And where did you live prior to that?

24 A Prior to that -- do you want the physical
25 address?

1 Q Yes.

2 A 15 Sutcliffe Ave. I was there for 10 years,
3 as well.

4 Q With respect to both locations, who, if
5 anyone, do you live with?

6 A I live with my wife and my four daughters.

7 Q And what is your wife's name?

8 A Jennifer.

9 Q And how long have you and Jennifer McCabe been
10 married?

11 A Twenty-two. So 23 years in August.

12 Q And you have four daughters; is that right?

13 A That's correct.

14 Q And how old are your daughters?

15 A I'm 49.

16 Q I'm sorry.

17 A My daughters?

18 Q That's okay, sir. Your daughters. How old
19 are your daughters?

20 A Twenty, 18, 16 and 15.

21 Q And your oldest daughter is Alli McCabe; is
22 that right?

23 A Yes. That's correct.

24 Q Do you work, sir?

25 A Yes, I do.

1 Q What do you do for work?

2 A I work for an information technology solutions
3 firm.

4 Q And how long have you been doing that?

5 A I think I'm coming on 15 years.

6 Q And does your wife work?

7 A No.

8 Q So what does your wife do?

9 A Stay at home. Raises the kids. Homemaker.

10 Q If I could turn your attention to January 28th
11 into January 29th of 2022. Do you recall those dates?

12 A Yes, I do.

13 Q Do you recall what days of the week they were?

14 A Friday into Saturday.

15 Q Did you work that day, on the Friday?

16 A Yes, I did.

17 Q And, at that point, do you recall, were you
18 working like in an office or remotely? If you know.

19 A I don't recall if that specific day I was in
20 the office. Sometimes I'd go in. Sometimes I'd work
21 from home. So I don't recall if I was actually
22 physically in the office. Sometimes I'll go in for a
23 few hours. So I don't recall exactly if I was home or
24 in the office that day.

25 Q So regardless, at some point you sort of wrap

1 up work for the day. And where did you go?

2 A Yes. I finished up work and met some friends
3 at a restaurant in Canton before my daughter's
4 basketball game.

5 Q So on that evening, your daughter had a
6 basketball game; is that right?

7 A Yes. That's correct.

8 Q And who did she play for at that time?

9 A She played for Canton High School.

10 Q And is that the varsity game?

11 A Yes.

12 Q And which of your daughters, as far as age is
13 concerned, which of your daughters was playing
14 basketball for Canton High School at that time?

15 A That would be my second oldest, who is --

16 Q I'm sorry. Go ahead.

17 A My second oldest.

18 Q Okay. So you, after work, had met some other
19 people at an establishment in Canton; is that right?

20 A Yes. That's correct.

21 Q Where did you go?

22 A The establishment was called the Canton
23 Junction Pub or Canton Junction. I don't know the full
24 name. It just went by "the Junction."

25 Q Okay. And who, if anyone, did you meet there

1 just in general?

2 A A handful of folks that play -- whose
3 daughters play basketball on the same team with my
4 daughter.

5 Q So just sort of a group of parents who had
6 kids on the basketball team?

7 A Yes. That's correct.

8 Q And was your wife, Jennifer, with you at that
9 time, as well?

10 A Yes. That's correct.

11 Q And about how long were you at the Junction?

12 A Give or take an hour, hour and a half.

13 Q And girls varsity basketball, was there sort
14 of like a typical time that that game would start or a
15 game would be scheduled for?

16 A Yes.

17 Q And what time was that generally?

18 A Typically 6:00 or 6:30 would be the normal
19 time. I don't remember if it was a 6:30 start that
20 night or -- actually, I think it was a 6:30 start. But
21 typically 6:00 or 6:30.

22 Q Okay. So sometime around 6:00 or 6:30, you
23 make your way over to the high school; is that correct?

24 A That is correct.

25 Q Was it a home game, a road game, if you

1 recall?

2 A That evening, it was a home game.

3 Q Do you recall anything about the game as far
4 as who they were playing or if they won or anything
5 like that?

6 A Yes. They were playing the town of Foxboro
7 High School, and they did not win. They went into
8 overtime and lost.

9 Q Now, with respect to your wife, Jennifer, as
10 the kids were growing up, what, if any, relationship
11 did she have as far as with respect to the kids and
12 basketball?

13 A As like the youth years?

14 Q Yes.

15 A Jennifer was a basketball coach and coached
16 throughout the years, coached a couple of my daughters.

17 Q So she coached -- and, with respect to the
18 daughter that was playing at the high school game that
19 night, was that one of the daughters that she had
20 coached?

21 A Yes. That's correct.

22 Q Okay. So fair to assume that she had also
23 coached several of the girls that were on the varsity
24 basketball team with your daughter, correct?

25 A Yes. A few of them, yes.

1 Q Now, when you get to Canton High School to the
2 basketball game, is there sort of a typical area where
3 you would sit or people you would congregate with while
4 you're watching the game?

5 A Yes. We'd sit up in the bleachers. Usually
6 the parents from the home side would tend to sit in the
7 same area.

8 Q So you sit there. You watch the game. The
9 game is over and then what is sort of the plan from
10 there or where do you go from there?

11 A After the game, I drove my younger two
12 daughters back home.

13 Q So your whole family was there for the game;
14 is that correct?

15 A My wife and my two younger daughters. My
16 older daughter was there. She wasn't there, but she
17 was there, as well.

18 Q So she was a student at Canton High School at
19 that time, as well?

20 A Yes, she was.

21 Q So she is sitting with the other students; is
22 that correct?

23 A Yes. I'm assuming. I don't recall where she
24 sat but most likely with the other students.

25 Q So you drove your two daughters home, and then

1 where did you go from there?

2 A After dropping my daughters off, my wife and I
3 proceeded to the Waterfall in Canton Center.

4 Q And do you recall what -- you were just in one
5 vehicle when you left the house and went to the
6 Junction and went to the high school game, back to the
7 house and to the Waterfall? Was it the same vehicle?

8 A Yes. We were in the same vehicle.

9 Q And do you recall what kind of vehicle it was
10 or whose vehicle it was?

11 A It was the family vehicle. It was my wife's
12 vehicle. I believe it was a Suburban or a Yukon. I
13 forget which one, what brand it was.

14 Q So some kind of SUV; is that correct?

15 A Yes. It's a large SUV.

16 Q And why did you go to the Waterfall?

17 A We went to the Waterfall. My wife informed me
18 that her sister was at the Waterfall with her niece and
19 a few other people, and we went to go meet them. My
20 understanding, it was my nephew's birthday either that
21 day or the day after, and they were going to meet out
22 at the Waterfall for his birthday.

23 Q Just to be clear as far as who we are talking
24 about, your wife's sister, what's her name?

25 A Nicole Albert.

1 Q And is Nicole married?

2 A Yes, she is.

3 Q And what's her husband's name?

4 A Brian Albert.

5 Q And the niece that you're talking about that
6 was out there with your sister-in-law, what is her
7 name?

8 A Her name is Caitlin Albert.

9 Q And the nephew of yours whose birthday it was
10 or was going to be, what is his name?

11 A His name is Brian, as well.

12 Q So essentially Brian Albert, Jr., even if he's
13 not --

14 A Yes. I believe he's a junior. Yes.

15 Q Okay. Now, with regard to the basketball
16 parents and the other people that you had been with at
17 the Junction and then at the game, what, if any,
18 communication was there amongst sort of the basketball
19 parents that evening or any other evening?

20 A Yes. So we had a group text with the
21 basketball parents, a handful of us, where after some
22 of the games, we would meet up afterwards. This
23 evening, I know we sent, Jen or I sent, a text out,
24 saying where we were going because we were obviously
25 meeting her sister. And a few of the parents responded

1 where they were going. We kind of split up except for
2 one couple decided to meet us at the Waterfall out of
3 that group text.

4 Q And the couple that decided to meet you at the
5 Waterfall, who are they?

6 A That would be Nick and Karina Kolokithas.

7 Q When you arrive at the Waterfall, you and your
8 wife, do you recall where it was that you parked in
9 relation to the Waterfall?

10 A Yes. If you are looking at the front door of
11 the Waterfall, we were parked in the parking lot down
12 the left.

13 Q And the Waterfall sort of shares its parking
14 lot or its establishment with a condo complex; is that
15 correct?

16 A That is correct.

17 Q So you parked somewhere in that parking lot?

18 A Correct. I parked in the parking lot. Yes.

19 Q And, when you came into the Waterfall, who, if
20 anyone, did you see there and where did you go?

21 A When we walked into the Waterfall, we
22 identified where Jen's sister and their party was
23 sitting.

24 Q And where were they sitting in relation to the
25 Waterfall?

1 A When you walk in the front door, I believe
2 there's three long tables that are set up. We passed
3 -- they were in the third table, long table, closest to
4 the bar, across from -- there was also a band. They
5 were right across from a little band.

6 Q So there was a live band there, as well?

7 A Yes, there was.

8 Q Now, prior to you and your wife entering into
9 the Waterfall, do you recall what, if anything, you did
10 or who, if anyone, you were talking to in the parking
11 lot?

12 A Yes. On the car ride from my house to the
13 Waterfall as well as in the parking lot, I was talking
14 to a friend of mine on the phone.

15 Q And do you recall just generally what the
16 conversation was about?

17 A Yes.

18 Q And what was it about?

19 A It was about my daughter, my oldest daughter,
20 Alli, who we mentioned, it was about her hockey team
21 and her hockey coach. I was talking to one of the
22 hockey coaches.

23 Q And, when you were talking with this person,
24 this is inside the car; is that correct?

25 A That is correct.

1 Q And despite it being sort of your wife's car,
2 was your phone hooked up to the speakers? Did you have
3 a Bluetooth or anything like that?

4 A I don't know if I connected mine to the
5 Bluetooth or not. I don't recall if I was connected to
6 the Bluetooth or not. I know my phone connects, so
7 possibly. I don't know for sure if it was connected
8 that evening.

9 Q Okay. Now, with respect to it being your
10 wife's car, when both of you are in the car, is there
11 sort of a default as to which of your phones would
12 connect to the Bluetooth, yours versus hers?

13 A If you look at it that way, it would be my
14 wife's, because it was her car.

15 Q So the car would probably recognize her device
16 over your device, correct?

17 A That is correct.

18 Q Now --

19 A Actually, I started the call definitely on my
20 phone because my kids -- I was on the call for a while.
21 So I think I had my kids still in the car when I was
22 dropping them off. So I wouldn't have them listening
23 to the call. So I must have been on it. I don't
24 remember. But I must have been listening on my --
25 holding it in my hand.

1 Q And, when you come into the Waterfall, do you
2 recall about what time that was?

3 A 9:00 o'clock, give or take a couple minutes.

4 Q And, again, you come over to a table closest
5 to the bar. And who is in the group when you get
6 there?

7 A When we arrived, it was Nicole; Caitlin;
8 Caitlin's boyfriend, Tristin; Chris Albert and Julie
9 Albert. We were also joined by Nick Kolokithas, who I
10 mentioned. I just don't remember if Nick was already
11 in or if Nick walked in right after me. But Nick and
12 I, we got there at similar times. I just don't know if
13 he was already sitting in the bar or standing there
14 when I walked in or if he came in right after. And
15 Jen, obviously.

16 Q To be clear, the people that were with you at
17 this high-top table in this sort of group either then
18 that you're talking about or throughout the course of
19 the evening, these were people that were either sort of
20 family or friends of yours or your wife's?

21 A Oh, yes. That's correct. Family and friends.
22 Correct.

23 Q So whether or not you and Mr. Kolokithas came
24 in at the same time or slightly staggered, at some
25 point, he came in, as well. Correct?

1 A Yes. That's correct.

2 Q Okay. And, with respect -- obviously, you
3 were out and you were at a bar, correct?

4 A Yes.

5 Q And, from what you recall, you were drinking
6 and most, if not all, of the other people were
7 drinking, as well?

8 A Yes. Everybody at the table to my
9 recollection was drinking.

10 Q And do you recall specifically what you were
11 drinking on that night?

12 A I do.

13 Q And what were you drinking?

14 A I was drinking vodka with water and a splash
15 of Crystal Light.

16 Q And is that something that you would normally
17 drink?

18 A No.

19 Q And why were you drinking that on that
20 occasion?

21 A I was in a diet competition with other people
22 in the town. So I was trying to stay away from any
23 beer, which would be what I typically would drink.

24 Q And, as far as your observations of the other
25 people there throughout the course of the night, did

1 you note anyone in your group either at that time or
2 subsequent in the night to be sort of overly
3 intoxicated or drunk or anything like that?

4 A No.

5 Q And, as far as the other people in your group
6 as far as drinking was concerned at that time or any
7 time later in the night, was their drinking sort of
8 commensurate with the amount that you were drinking?

9 A I wasn't paying attention to see who was
10 drinking or how much they were drinking. You know, I
11 don't even know how many I had. Maybe -- at least
12 three, maybe five. I don't know for sure but give or
13 take something there. But, again, I wasn't paying
14 attention to see if anybody was drinking faster than
15 somebody else or et cetera.

16 Q And, in that sense, sort of how long were you
17 at the Waterfall that night?

18 A I got there at nine and left a little after
19 12. So a little over three hours.

20 Q So roughly 9:00 o'clock to about midnight or
21 so, correct?

22 A Yes. I recall leaving a little after
23 midnight. Correct.

24 Q Okay. Now, the initial group that you walked
25 over to around the time that you got there, did that

1 group expand or contract? Did people come or leave?
2 Can you explain sort of the order of that over the
3 course of the evening?

4 A Yes. Shortly after we settled in, Nick's wife
5 showed up. It could have been 15, 20 minutes. I don't
6 remember the exact time that Nick's wife, Karina, came.
7 And give or take 45 minutes, an hour after that,
8 Brian Albert, Sr. and Brian Higgins showed up. And
9 around eleven-ish, give or take, I don't know the exact
10 time, Karen Read and John O'Keefe showed up, as well.

11 Q Let me ask you a little bit about some of
12 those other people, but let me ask first about as far
13 as Caitlin's boyfriend, Mr. Morris, how long was he
14 there that night?

15 A I don't recall how long he was there. I do
16 know he had left. He had mentioned something about
17 working that evening. There was obviously a snowstorm
18 coming in that evening, and he had mentioned that he
19 was going to go home for a little bit before he had to
20 go out and -- I don't know if he was plowing or
21 shoveling or doing something. But he was going to be
22 going out that evening to plow, I believe.

23 Q And Christopher Albert and Brian Albert, they
24 are brothers; is that right?

25 A Yes. That's correct.

1 Q And Christopher Albert's wife is Julie Albert;
2 is that correct?

3 A Yes.

4 Q And she is also friends with your wife,
5 Jennifer McCabe, correct?

6 A Yes.

7 Q And has been so for years, as far as you know?

8 A As far as I know, yes. They have been friends
9 for years.

10 Q Now, you mentioned someone by the name of
11 Brian Higgins. Did you know Brian Higgins prior to
12 that evening?

13 A Yes.

14 Q How did you know him?

15 A I had met Brian a few times, social settings.
16 I recall meeting him at the Junction one evening. I
17 believe I met him at a graduation party. I don't know
18 how many times I met Brian, but I met him maybe three,
19 four times. I don't know exactly how many. But I knew
20 who he was.

21 Q And knew who he was as far as he was friends
22 or friendly with your brother-in-law, Brian Albert,
23 correct?

24 A Yes.

25 Q And that's how you knew him, was through

1 Brian Albert?

2 A Yes.

3 Q And do you know where Brian Albert, Sr. and
4 Brian Higgins had been prior to them coming to the
5 Waterfall?

6 A Yes. I was informed that they were in New
7 York, coming back from New York from a funeral of a New
8 York police officer.

9 Q And both of them, as far as you knew,
10 Brian Albert, Sr. and Brian Higgins, they were in law
11 enforcement; is that correct?

12 A Yes.

13 Q Now, you mentioned that at some point around
14 11:00 or so, John O'Keefe and Karen Read came into the
15 Waterfall, correct?

16 A Yes.

17 Q And, just to be clear, when you speak of Karen
18 Read, that's someone that you had met prior to this
19 evening, as well?

20 A Yes. That's correct.

21 Q And, for clarity purposes for the record, do
22 you see Ms. Read in the courtroom today?

23 A Yes, I do.

24 Q Can you just describe as to where she is
25 seated or an article of clothing that she's wearing?

1 A She is seated at the table with her attorneys.
2 Do you want me to describe her clothing?

3 Q If you could.

4 A Black sweater, I'm not sure, or dress.

5 MR. LALLY: Your Honor, I'd just ask that the
6 record reflect identification of the defendant by
7 the witness.

8 THE COURT: Yes.

9 BY MR. LALLY:

10 Q Now, with regard to Mr. O'Keefe first, how was
11 it that you knew Mr. O'Keefe?

12 A I met John O'Keefe when he started to be the
13 caretaker for his niece and nephew after their parents
14 had passed.

15 Q Specifically, you're referring to (c) and
16 (c); is that correct?

17 A That is correct.

18 Q So their mother and father tragically passed
19 away and Mr. O'Keefe then became their guardian,
20 correct?

21 A That is correct.

22 Q And, when you met Mr. O'Keefe, is that when
23 you were living at the house on Sutcliffe?

24 A Yes.

25 Q And where was that house in relation to where

1 Mr. O'Keefe initially lived with his niece and nephew?

2 A A couple hundred yards. Two different
3 streets. It was a neighborhood with multiple streets.
4 My house was on Sutcliffe. Drive down Sutcliffe, maybe
5 pass one, two, three houses, took a right and that was
6 John -- that was the street that the kids lived on,
7 maybe four houses up on the right.

8 Q And, with reference to -- you mentioned that
9 you had four daughters; is that correct?

10 A Yes.

11 Q And were any of your daughters around the same
12 age as John's niece, (c)?

13 A Yes. My third daughter is the same age, same
14 grade, as (c).

15 Q And about this time that John had moved in his
16 house, close to the house you were living on Sutcliffe,
17 about how old was your daughter and his niece, (c)?

18 A I believe it was kindergarten. How old would
19 you be in kindergarten? Seven. I don't know.

20 Q I think kindergarten suffices. So fair to say
21 they were very young, correct?

22 A Yes.

23 Q And, with reference to the kids, what, if any,
24 beyond being sort of neighbors, what, if any,
25 relationship did either you or your wife have with

1 regard to Mr. O'Keefe and specifically his niece and
2 nephew?

3 A I'm sorry. Could --

4 Q It's a very long question. Let me see if I
5 can shorten it up.

6 A I couldn't hear the end of it.

7 Q Around that time that Mr. O'Keefe moved in
8 with his niece and nephew and took over guardianship of
9 them, what, if any, relationship beyond being neighbors
10 did yourself and/or your wife have with respect to
11 Mr. O'Keefe and the kids?

12 A Oh, yeah. We had a good relationship,
13 especially my wife. She was having the kids the same
14 age, (c) and my daughter. She was very involved
15 with helping him out, whether it's rides to various
16 events. Throughout those years, I had also coached
17 (c), myself, a couple times in soccer. And my wife
18 also coached her in basketball. So play dates. Things
19 of that nature. At various times we'd go out with John
20 where he would meet up somewhere where we were. So a
21 friendly relationship where, in essence, John was
22 acting as a mother and a father. So he'd do a lot of
23 communicating through my wife in regards to needing
24 help and things of that nature.

25 Q And, in particular, his niece, (c), and

1 your daughter who was around the same age, were they
2 friends?

3 A Yes. They were friends.

4 Q And about how close were they, particularly
5 around that younger age?

6 A They were very close in the young age. (c)
7 would spend a lot of time at our house, spend a lot of
8 time sleeping over. So they were very close.

9 Q And (c), in particular, how close was she
10 with your wife, Jennifer?

11 A (c) was close with Jen. (c) was mature
12 well beyond the other girls in regards to just -- she
13 was bright, and she was very articulate. So she could
14 have conversations with the adults much better than the
15 other kids. Having four girls, she was a bright kid.

16 Q Now, at some point, Mr. O'Keefe and the kids
17 moved from that house and you also moved from the house
18 on Sutcliffe, correct?

19 A That is correct.

20 Q And do you recall the order of that? Was it
21 you that moved first or they that moved first?

22 A I'm pretty sure I moved first. I moved first,
23 yes.

24 Q And about how far away from the house on
25 Sutcliffe was your new house?

1 A It's right up the street. Driving in a car,
2 two minutes. I don't know. A mile and a half. I'm
3 not sure of the exact distance, but not far away.

4 Q And where did John and the kids move to?

5 A They moved a little further away. They were
6 probably a couple of miles away, two and a half, three
7 miles. Again, I don't know the exact distance. Not
8 far. That side of town, everything is fairly close.

9 Q And, specifically, they moved to a house on
10 Meadows Avenue; is that correct?

11 A That is correct. Yes.

12 Q And the nature of your relationship, you and
13 your wife's relationship with John and the kids and
14 your daughter and (c), did that sort of continue
15 throughout after each of you moved from the original
16 neighborhood?

17 A Yes.

18 Q Now, with respect to the defendant, Ms. Read,
19 when was it that you first met her?

20 A It was probably 2020. We met her summertime
21 of I think it was the COVID year. It was 2020, summer.

22 Q And do you recall the circumstances of that or
23 how you came to meet her at that time?

24 A Yes, I do.

25 Q And can you explain to the jury what were the

1 circumstances? Where did you meet her?

2 A John had reached out to my wife, Jen. It was
3 on a Saturday. I don't know if they connected that
4 Saturday or the Friday, but they connected. John asked
5 if he could come by the house with the kids. We have a
6 pool. So he wanted to come by with the kids, swimming,
7 and wanted to introduce Karen to us. He specifically
8 wanted to introduce Karen to my wife, Jen.

9 Q And do you know why that was?

10 A Yes. Because they were dating, and he
11 informed my wife that Karen had (c) and my wife has (c)
12 So he thought it would be good for the two of them to
13 get to know each other, could have conversations with
14 each other, obviously both suffering from (c)

15 Q How long has your wife suffered from MS?

16 A I'm going to say -- I think she's been
17 suffering for a while. But I'd say her diagnosis, nine
18 years. I don't remember the exact date. I want to say
19 about nine years.

20 Q And so Mr. O'Keefe; Ms. Read, the defendant;
21 and the two children came over the house that day; is
22 that correct?

23 A Yes. That's correct.

24 Q And about how often did you see Ms. Read from
25 that summer of 2020 until about the time of January

1 2022?

2 A I would see her. There was a couple other
3 times that John and Karen came by the house with the
4 kids. I'd also see her at sporting events, whether it
5 was soccer or whether it was basketball. I'd see her
6 at events, whether it was practices, picking somebody
7 up. I would see Karen around.

8 Q And, as far as you knew or what, if anything
9 -- let me ask you this: As far as your relationship
10 with Mr. O'Keefe, is someone he was dating or what was
11 going on with someone he was dating, his relationship,
12 is that the kind of thing that the two of you would
13 discuss?

14 A You're asking John and I, if he would --

15 Q Yes.

16 A No. I don't recall ever having any
17 conversations about his relationships with me directly.

18 Q And that applies to the defendant, Ms. Read,
19 and it applies to any other relationship while the two
20 of you were friends, correct?

21 A Correct.

22 Q Now, turning your attention back to the
23 Waterfall on the evening of the 28th, when Mr. O'Keefe
24 and the defendant come in, where is it that they went
25 in relation to the group at the high top when they

1 first came in?

2 A They came in and immediately made contact with
3 us, walked right over to our table.

4 Q And, when they came over to the table, what,
5 if anything, happened when they came over to the table?

6 A Shaking hands. Hugging. How you guys doing?
7 Good to see you. Typical meet and greet when you see
8 somebody that you're friends with.

9 Q And, if you recall, was there a particular
10 sort of side of the table or where were you situated in
11 relation to the table and who, if anyone, was situated
12 around you?

13 A Yes. If you -- if I was to be looking at the
14 table, long table, I spent most of the time at the end
15 of the table, kind of in the corner, on the right side.
16 Nicholas Kolokithas was right next to me. There was a
17 wall. It's kind of thin. The table ends. There is a
18 little space, and there is a wall right behind you.
19 Nick was there. I was there. Jen, Karina were on this
20 side most of the time. Brian and Brian were on the
21 opposite side of the table, to my recollection. I
22 mean, there was obviously some movement around, but I
23 spent most of the time -- again, if the table is coming
24 across, standing on the end. I did sit down for a
25 little bit, as I recall. But definitely on the edge of

1 the long table.

2 Q Is it fair to say the Kolokithases didn't
3 really know anybody at the table besides yourself and
4 your wife?

5 A Fair to say. They obviously knew who John
6 was. They had a daughter, as well, the same age as
7 (c). I don't know if they hung out with them but
8 fair to say that obviously my family was there, Jen's
9 family. So yes. I'd say in general, correct.

10 Q I'm sorry. I'm just going to wait for the
11 siren to go by.

12 Now, sir, if I could ask, as far as
13 Mr. O'Keefe was concerned, do you recall anything about
14 what he was wearing that night?

15 A I recall a baseball cap and he tends to brim
16 it over a little bit, and shirt and jeans. I don't
17 know exactly what he was wearing.

18 Q And do you recall seeing him at any point in
19 time with any kind of winter coat or heavy coat or
20 anything like that?

21 A Not that I recall. If he had one on, he had
22 one on. I don't recall it.

23 Q And, as far as his person, his features, what
24 you could see, what, if any, injuries did you observe
25 on him at that time?

1 A I did not see any injuries.

2 Q And do you recall what John was drinking that
3 night?

4 A I believe he was drinking Bud Light beer.

5 Q And is that pretty typical for him?

6 A The majority of times I saw John, yes. He was
7 drinking Bud Light. I do recall when he came to my
8 house for that first meet he was drinking Bud Light
9 Limes, which I thought was interesting. But he was at
10 a pool and maybe it was a summer drink for him. I'm
11 not sure.

12 Q Okay. Fair enough.

13 A I think I gave him a hard time.

14 Q Now, with reference to Ms. Read that night,
15 what, if anything, did you observe her to be drinking
16 or have with her?

17 A She was drinking a clear liquid. I just
18 assumed it was a vodka soda or vodka something.

19 Q And, as far as the -- absent the Crystal
20 Light, which I'll leave that alone for now, but absent
21 the Crystal Light, was it similar to the drink that you
22 were having that night?

23 A Yes. It could have been vodka and water. I
24 don't know.

25 Q Now, do you know where the two of them,

1 meaning Mr. O'Keefe and the defendant, do you know
2 where they had come from prior to coming into the
3 Waterfall?

4 A John had said they came over from across the
5 street from C.F. McCarthy's.

6 Q Now, let me ask you this: As far as you were
7 going to the Waterfall or your understanding was that
8 it was your nephew, Brian Albert, Jr.'s birthday,
9 correct?

10 A Yes.

11 Q And was he at the Waterfall at any time when
12 you were there?

13 A No.

14 Q And, at some point, did you learn where he
15 was?

16 A Yes. I learned he was still home.

17 Q And was there any conversation or do you know
18 why he was still home?

19 A My understanding is I thought we were waiting
20 for him. He never showed up. My understanding was he
21 chose to stay home. He had a couple of friends over
22 the house.

23 Q Now, from the time that you were in the
24 Waterfall, how would you describe sort of the mood or
25 the demeanor of sort of the group at large?

1 A Everybody was just having a good time, hanging
2 out, socializing, talking. As I said, there was a live
3 band playing for a little bit. Just a normal evening.

4 Q And, as far as the defendant and Mr. O'Keefe
5 were concerned, from what you could see or your
6 observations, was there any sort of fighting or arguing
7 or anything like that that you observed between the two
8 of them over the courses of the evening at the
9 Waterfall?

10 A No, I did not.

11 Q You mentioned that you had left the Waterfall
12 sometime after midnight; is that correct?

13 A Yes. That's correct.

14 Q Before we get to that, over the course of the
15 evening at the Waterfall, did you have occasion to have
16 conversation with either Mr. O'Keefe or the defendant?

17 A Yes, I did.

18 Q Would that be both?

19 A Yes.

20 Q Starting with Mr. O'Keefe, what, if any,
21 conversation, generally speaking, do you recall having
22 with Mr. O'Keefe that evening?

23 A I believe that night -- I think that night he
24 was out because (c) -- maybe they just got the
25 acceptance for (c). He was so excited about her

1 acceptance to Bishop Feehan, a local high school.

2 Q And that was something that you were aware of
3 that she had applied for to get into that school,
4 correct?

5 A Yes.

6 Q With respect to Ms. Read, what, if any,
7 conversations do you recall in regard to her?

8 A Normal conversation. Hi, how you doing. Good
9 to see you. She made a reference to myself, asking how
10 Jen and I do it. And I said -- she was talking about
11 with the four girls. How do you do it? How do you
12 raise four girls? You guys look happy. And I actually
13 joked to her. I said, well, we're at a bar. Yeah.
14 Obviously, any marriage will tell you, you have your
15 ups and downs. But brief, conversational. Nothing of
16 any substance. Just good to see you.

17 Q Now, this time that you're talking about that
18 you're leaving shortly after midnight, is that around
19 the time that sort of the bar was winding down for the
20 evening?

21 A Yes.

22 Q And the band that had been playing before,
23 were they still playing or had they --

24 A No. They had stopped earlier, before 12. I
25 don't remember the exact time. But they definitely

1 stopped earlier. There were some people there, but our
2 table was definitely the last table to wrap it up.
3 Well, some people left before me but the band was
4 packing up, you know, packing up all their equipment.

5 Q And so in that vein, if you recall, can you
6 tell the jury sort of the order of people from your
7 group and when they left and things of that nature?

8 A Yes. So Brian Albert, Brian Higgins and
9 Nicole were packed up, leaving before us. Then my
10 wife, Karen; Karina; John and Chris, they started
11 leaving before us. I think John was delayed, but they
12 walked out. And Nick and I were the last two at the
13 table. I recall us picking up some of the empty
14 glasses and beer bottles because they said the bar was
15 right behind us. So I recall picking up the glasses
16 and some of the bottles and bringing them to the bar,
17 as well as a couple of the members of the band were
18 sitting on the edge of the bar, and just some brief
19 conversation with them, you know, good job. You guys
20 coming back. You know, things of that nature. And
21 then Nick and I walked out.

22 Q Now, over the course of the evening at the
23 Waterfall while you were there, what, if any,
24 conversation was had amongst the group in regard to any
25 plans or where to go next or where people were going

1 after the Waterfall?

2 A Yes. As mentioned, we thought we were going
3 to meet my nephew. He didn't come out. We found out
4 he had a few friends at the house. When Brian and
5 Nicole were leaving, they had mentioned that Brian was
6 at the house with a couple friends and we were welcome
7 to come back and have a celebratory drink for his
8 birthday. So he had extended an invite to the table.
9 You know, whoever is around and wants to come back,
10 you're welcome.

11 Q So that was sort of extended to the entirety
12 of the group; is that correct?

13 A That is correct.

14 Q And so what was your understanding, at least
15 as your plan, you and your wife, Jennifer, when you
16 were leaving the Waterfall?

17 A That we'd be stopping by Brian and Nicole's
18 house.

19 Q And so prior to that discussion regarding
20 stopping by your brother-in-law, Brian Albert's house,
21 what, if any, discussion was there in regard to his
22 brother, Christopher Albert?

23 Let me ask you this: What, if any, other
24 discussion other than going to your brother-in-law,
25 Brian Albert's house was there at the table in regard

1 to places to go afterward?

2 A Yes. There was discussion about going to D&E
3 Pizza. That's a pizza/sub shop that Chris Albert owns
4 in Canton Center which is, you know, a hundred yards or
5 whatever across from the Waterfall.

6 Q And can you describe sort of what was the
7 substance of that discussion and who was involved in
8 that discussion?

9 A Yes. We have done that in the past where we
10 have wrapped up for the night. We have gone over there
11 and turned the ovens on and made some pizza. In this
12 particular instance, Karen had asked if we could do
13 that. She wanted to go to D&E. She wanted to make
14 pizza. Chris and I were adamant that we were not going
15 to D&E because we were on this diet and we were not
16 going to go subject ourselves to late night pizza.

17 So we said, no, we're not going to D&E, though
18 we had conversations. Karen wanted to go but we kept
19 saying, no, we're not going to go.

20 Q When you say you kept saying, was that
21 something that the defendant raised once or more than
22 once?

23 A More than once.

24 Q Now, when you leave, you and Mr. Kolokithas,
25 and you walk out of the Waterfall, you go over to your

1 car in the parking lot; is that right?

2 A Yes. That's correct.

3 Q And, again, by "your car," I mean your wife,
4 Jennifer's car; is that right?

5 A Yes.

6 Q And where was she in relation to the car when
7 you get there?

8 A She was already in the car.

9 Q Let me ask it a better way. Where was she
10 seated within the vehicle?

11 A Sorry. She was in the driver's seat.

12 Q Okay. So you get in the front passenger side;
13 is that right?

14 A That is correct.

15 Q And, when you get into the car, what, if any,
16 communication did you become aware of between your wife
17 and Mr. O'Keefe?

18 A When I got into the vehicle, my wife received
19 a text from John and said, where to? I think he was
20 looking for the address. I told my wife -- we were
21 starting to drive out of the parking lot. I told her
22 to just call him instead of texting him back.

23 Q So rather than text while driving, you advise
24 her, just call him back?

25 A Correct.

1 Q And did she call him?

2 A She did.

3 Q And, with respect to that Bluetooth that we
4 were discussing earlier within the car, this call from
5 your wife, Jennifer, to John O'Keefe, was that using
6 the Bluetooth technology?

7 A I'm assuming it was. I don't recall, but I
8 knew he was on the phone, asking where, what the
9 address was.

10 Q Let me ask you this: Could you hear both
11 sides of the conversation?

12 A I could hear him, yes.

13 Q So you heard your wife talking and you heard
14 John talking, correct?

15 A Yes.

16 Q And, as far as that communication with
17 reference to where to or where to go or the address,
18 can you describe to the jury sort of what that
19 conversation consisted of?

20 A The conversation was the address, 34 Fairview.
21 And I actually was definitely mumbling stuff from my
22 seat, saying, come out, take a left on Sherman and 34
23 Fairview. And that initial call was just giving him
24 the address and telling him Sherman is the easiest way.

25 Q And so when you say "that initial call," was

1 there a subsequent call while you were still en route
2 to 34 Fairview?

3 A Yes. There was a call a few minutes later.
4 Somehow, I don't know why, but somehow they didn't know
5 where the house was. I recall -- again, my assumption
6 would be they had come from Sherman, from Chapman
7 Street. We referenced -- my wife referenced a friend
8 of (c) 's who lives off of Fairview. We said, do you
9 know where this child lives? He said, yes. Okay.
10 Drive past her street and the house will come up on the
11 left.

12 Q And the friend of (c) 's, what was her name?

13 A Her name is (c) .

14 Q Do you recall whether it was you or your wife
15 that made reference to (c) 's house?

16 A I think we both did. I think I said it and
17 then I think my wife repeated it.

18 Q And that was someone, the (c) child was
19 someone, who was friends with both your daughter and
20 with (c) ; is that correct?

21 A Yes.

22 Q Around the same age?

23 A Same age. Same grade.

24 Q Now, when you were talking on this second
25 conversation, again, you could hear both sides of the

1 conversation; is that right?

2 A That's correct.

3 Q And, as far as Mr. O'Keefe's side of the
4 conversation, what, if anything, did he say as far as
5 who was coming or who he was with at the time?

6 A He didn't make any reference to -- you're
7 asking if he made reference of anybody else? Is that
8 what you're asking?

9 Q What I'm asking is when he was saying as far
10 as looking for the house, was he saying "I" or "we"?

11 A We're on our way. Okay. Great. We're on our
12 way.

13 Q Okay. And from, obviously, the earlier
14 interaction that you had with him and him saying "we,"
15 who did you infer that "we" to be?

16 A Karen.

17 Q And, at any point in time during the
18 conversation that you had where you were hearing both
19 sides, did you hear Ms. Read in the background at any
20 point?

21 A I do not recall hearing Ms. Read, no.

22 Q Now, about how far a drive or how long a drive
23 is it, roughly, from the Waterfall to 34 Fairview, if
24 you know?

25 A The way I would go, four minutes, give or

1 take. Five minutes. There's multiple ways but it
2 depends on how you go, I guess.

3 Q And the way that you go, as far as what you're
4 talking about, is that your recollection of how or
5 where your wife drove that night?

6 A Yes.

7 Q Now, as far as when you arrive at the house,
8 where did your wife park the vehicle in relation to the
9 house?

10 A She pulled the vehicle into the driveway.

11 Q And you're obviously familiar with the address
12 or the residence at 34 Fairview, correct?

13 A Yes, I am.

14 Q You've been there several times before this
15 evening?

16 A Yes, I have.

17 Q Essentially, there's two garage doors on the
18 house? There's one on the left and one on the right;
19 is that correct?

20 A Yes.

21 Q And do you recall whether or not your wife
22 parked on the left side of the driveway or the right
23 side of the driveway?

24 A I believe it was the left, but the driveway is
25 fairly wide. It kind of widens out, not just the two

1 doors. So I don't know if she was right on the left
2 where the walkway is or if she was, you know, kind of
3 more in the middle. That driveway you could pull up
4 even on the right of her. But somewhere. I don't know
5 exactly. But she pulled into the driveway.

6 Q So she pulls into the driveway. She parks.
7 You guys go in the house, correct?

8 A Yes.

9 Q And, when you get inside the house, who, if
10 anyone, do you observe there?

11 A When we entered the house, we observed
12 Caitlin; Brian, Jr. Brian had two friends there,
13 Julie Nagel and Sara Levinson; Brian Higgins and
14 Brian Albert, Sr.

15 Q And where in the house --

16 A Did I say Nicole? Nicole. I don't know if I
17 said Nicole.

18 Q And where in the house were they situated?

19 A When I recall, everybody was congregated in
20 the -- when you walk in the front door, to your right
21 there is a table and then there's an open floor where
22 it goes right to the kitchen and the room with the
23 table. They just flow into each other. So people are
24 surrounding either the island in the kitchen and/or the
25 table area.

1 Q And, from your recollection, is that
2 essentially where people mainly congregated throughout
3 the course of the night that you were there?

4 A Yes.

5 Q And about how long a period of time were you
6 there at 34 Fairview that night?

7 A I'd say a little over an hour. No. An hour
8 and forty, hour and -- I got there about 12:20-ish and
9 left at 1:40. I don't know the exact time. 1:40,
10 1:45-ish.

11 Q So you got there somewhere closer to 12:30 and
12 you left somewhere closer to about 1:45, 2:00 a.m.; is
13 that correct?

14 A Got there about 12:20, give or take, and then,
15 yeah, left about 1:40, 1:45. I don't know the specific
16 time but somewhere around there.

17 Q And similar to the question I asked you about
18 the Waterfall as far as how would you describe sort of
19 the mood or the demeanor of the group in the house when
20 you got there?

21 A Everybody was hanging out. I know Julie was
22 excited we just showed up, good to see us. Brian,
23 excited that we came by. Normal.

24 Q Okay. So fair to say so tension, no
25 arguments, nothing like that while you were at the

1 house?

2 A No.

3 Q And do you recall sort of what you were doing
4 while you were at the house or what the group was
5 doing?

6 A Kind of hanging out, talking, sitting around
7 the table, engaging. Music was on. Just having a good
8 time. Just hanging out, talking, enjoying each other's
9 company. I do recall my wife put on a foolish video
10 that she wanted to show the kids at the table. But,
11 other than that, just socially hanging out with each
12 other.

13 Q The foolish video that you're talking about,
14 do you recall what that was?

15 A Yes.

16 Q And can you describe that to the jury?

17 A It was a video for the song "It's Raining
18 Men."

19 Q And do you recall, generally speaking, what
20 was in the video or why it was a foolish video, as
21 you've described?

22 A Well, in the family, one of Jen's sisters had
23 put on a show before with an umbrella. So at some
24 point, my wife came across this video and it was people
25 just dancing around. So she was showing my niece and

1 my nephew and friends the video so they could see. We
2 were kind of picking on my sister-in-law.

3 Q And you have another nephew by the name
4 of -- I'm sorry. Are you familiar -- you mentioned
5 earlier at the Waterfall there was Christopher and
6 Julie Albert; is that right?

7 A Yes.

8 Q And you're familiar with them? Your wife is
9 friends with Julie, correct?

10 A Yes.

11 Q Okay. And you know their children, as well;
12 is that right?

13 A Yes, I do.

14 Q Okay. And, specifically, you know their
15 middle child, Colin?

16 A Yes.

17 Q And, at any point in time in the evening when
18 you were there at 34 Fairview Road, was Colin Albert
19 there at any point?

20 A No, he was not.

21 Q So you didn't see him that night at all?

22 A Never saw him.

23 Q And, obviously, you know your oldest daughter,
24 Alli, correct?

25 A Yes, I do.

1 Q And, at any point in time when you were at 34
2 Fairview, did you see her, her vehicle or anything?
3 Did you have any knowledge that your daughter, Alli,
4 was there at the time that you were there?

5 A No, she wasn't.

6 Q So she wasn't there? You didn't see her
7 there? You didn't know if she had been there before
8 you or anything like that?

9 A Correct.

10 Q Now, turning back into the house, as far as
11 the group that you were with, was there any point in
12 time that anyone from that group left that sort of
13 general area of the dining room and the kitchen that
14 you recall?

15 A We were in that room. There is a room right
16 next to the kitchen with a doorway that you can walk
17 through. I was seated at the table, but you could walk
18 through the doorway. You know, I know Julie Nagel went
19 into that room because she was looking out the door.
20 Other people could have walked in and out of that room.
21 It's right there, right next to us.

22 Q At any point in time over the course of that
23 evening, did you see anybody sort of go upstairs or
24 downstairs to the basement or anywhere else but that
25 general area of those three rooms in the home?

1 A I did not see anybody.

2 Q Now, at some point, you mentioned that
3 Julie Nagel was looking outside for something; is that
4 correct?

5 A Yes. That is correct.

6 Q And how long was that in reference to after
7 you arrived and then when you happened?

8 A Again, I don't know the exact time. I'm going
9 to say it could have been three minutes. It could have
10 been three minutes. It could have been five minutes.
11 Somewhere in that vicinity. We arrived, said hello,
12 good to see everybody. And shortly after, she had
13 mentioned that her brother was there to pick her up.

14 Q Now, as far as Ms. Levinson and Ms. Nagel,
15 they were friends of your nephew, Brian Albert, Jr.; is
16 that right?

17 A That's correct.

18 Q And did you know them at all at that time, you
19 know, when you arrived there on the 28th or the 29th?

20 A Ms. Levinson I did not know. First time I met
21 her. I definitely had met Julie before. She had --
22 you know, Brian and her hang out. So I definitely met
23 her. I don't know if it was previous to this or after
24 this, but Julie, you know, has helped my nephew, Brian,
25 when we go on vacation. We have a dog, and Brian would

1 usually be the go-to to, you know, let the dog out, et
2 cetera. And I know Julie has helped him. I just don't
3 know if that was previous to that or after. But I
4 definitely had met Julie before, yes.

5 Q Okay. So you had met her before but
6 essentially met her as a friend of your nephew's,
7 correct?

8 A Yes.

9 Q Not someone that you knew particularly well;
10 is that fair to say?

11 A Correct. I didn't know her well.

12 Q So after about three to five minutes or so
13 after you arrive, you observe Ms. Nagel looking
14 outside, correct?

15 A Yes. She was going out the door. Correct.

16 Q And do you know why she was going out the
17 door?

18 A She said her brother was there to pick her up
19 but she didn't want to leave.

20 Q And, at any point in time, did either yourself
21 or your wife extend an offer to either Ms. Nagel or
22 Ms. Levinson or both in regard to getting home?

23 A Yes. We informed my wife if they wanted to
24 stay, because we just got there, we would be more than
25 willing to drive them home.

1 Q And fair to say at this point in time, you
2 didn't even know where Ms. Levinson or Ms. Nagel lived;
3 is that correct?

4 A No idea.

5 Q So you didn't really know what you signed up
6 for as far as driving them home; is that correct?

7 A Canton's not that big of a town. So I wasn't
8 too scared. But, yeah. I didn't know exactly where
9 they lived. I knew they were from Canton.

10 Q Now, at some point when Ms. Nagel goes
11 outside, what, if anything, drew your attention to the
12 outside of the house?

13 A When she went outside or when she was opening
14 the door, her or somebody referenced that there was
15 another vehicle out front.

16 Q And so upon hearing that, where did you go?

17 A Upon hearing that, we just assumed that was
18 obviously John and Karen. So I don't recall if I
19 looked out the window first or looked out the door
20 first. But I looked out to see the other vehicle out
21 in front of the house.

22 Q And, just to be clear, when you say "window"
23 and when you say "door," like which window and which
24 door?

25 A Well, I was sitting at the table, and right

1 behind me is a window. Or, if I stood up and took five
2 steps, there is the front door of the house.

3 Q In addition to sort of the regular front door,
4 is there like a storm door or something that you would
5 have been able to see through? Is that -- if you know.

6 A That would be the front door, I would call the
7 storm door. Yes. I could see out the front. There is
8 another door, if you're looking at the house, the front
9 door, windows, and then there is another door. Julie
10 looked out or went out through that door. I either --
11 at that point, I either looked out the window or walked
12 over to the front door, which would be the opposite
13 door.

14 Q So regardless if you looked out the window or
15 you looked out the storm door or the front door, when
16 you looked out, what, if anything, did you see?

17 A I noticed the big SUV parked in front of the
18 house.

19 Q And do you know what color the SUV was?

20 A At the time, I didn't -- it was dark. I
21 didn't know if it was a black SUV, a dark green, a dark
22 blue. But it was a dark SUV.

23 Q And, at the time, were you familiar with
24 either or both of the vehicles of Mr. O'Keefe and/or
25 the defendant, Ms. Read?

1 A Yes. I knew Karen drove a dark SUV. I didn't
2 know the make and model. I just knew she drove a dark
3 SUV. I'd seen it at pickup and things of that nature.

4 Q And did you know what kind of vehicle that
5 Mr. O'Keefe drove around at that time?

6 A He had a smaller SUV. I don't remember the
7 make.

8 Q Do you remember what color that was?

9 A No. I don't remember the color of his SUV.
10 He had another car, too, that he drove around. I
11 remember that. That's about it.

12 Q And, when you're looking out from either the
13 window or the door, where was the dark SUV in relation
14 to the house?

15 A If you came out that front door, pretty much
16 right in front. Right in front of the house, parked in
17 front of the house.

18 Q Now, you mentioned that Ms. Nagel had left the
19 house through the other door and gone outside; is that
20 right?

21 A That's correct.

22 Q And, when you looked out, could you see
23 Ms. Nagel or where she had gone?

24 A No. There was another vehicle. Again, coming
25 out the front door, if you go to the left, there is a

1 driveway. There was another vehicle over there. I
2 don't know if it was on the street, facing this way, or
3 if it was pulled in. I just looked out the front door
4 and noticed the car, to be like, oh, that's John. That
5 was my focus. I didn't look for Julie.

6 Q Now, as far as the other vehicle, did you
7 observe at least enough to know whether or not it was
8 behind the dark SUV, in front of the dark SUV or
9 something else?

10 A Yeah. It was to the left. It was equivalent
11 to where the driveway was. And then after the end of
12 the driveway, there was a Jeep. And then after the
13 Jeep was the SUV, the dark SUV.

14 Q And with respect to, just from your
15 perspective, you're looking out. So the driveway would
16 have been to your left; is that right?

17 A Correct.

18 Q Are you familiar with any other sort of like
19 landmarks or anything else in the front yard area of
20 your brother-in-law's house?

21 A Yes. So you look out. The driveway is to the
22 left. If you look to the right, there is an island of
23 like maybe rhododendrons or something, bushes. There
24 is a flagpole. Right there is a utility, I believe
25 it's a green utility box, I'm assuming it's a utility,

1 kind of on the edge. There is a fire hydrant. All
2 that stuff was to the right side of looking out the
3 front door.

4 Q Now, after you look out this initial time and
5 you see this dark SUV sort of right in front of the
6 door, was that the only time that you looked out or did
7 you look out on subsequent occasions?

8 A No. I looked out again because it had been a
9 few minutes, two, three, four minutes. I'm not sure
10 how long. But it had been a few minutes, and we
11 thought it was weird they hadn't come into the house.
12 I looked out and saw the SUV again.

13 Q And, when you looked out for the second time,
14 where was the SUV in relation to where it was the first
15 time?

16 A The SUV had moved up the road. From the front
17 of the house, it went from, you know, Spot "A" to Spot
18 "B." Now it's further up, more in sync of where the --
19 again, the flagpole, the utility box, more in sync with
20 that. It had moved up the road. I thought it was
21 weird that they hadn't come in.

22 Q Now, as far as the times that you're looking
23 out, did you happen to make any note of sort of --
24 well, let me ask you this: Taking you back to the
25 Waterfall just for a second, when you were driving or

1 your wife was driving from the Waterfall to 34
2 Fairview, what, if anything, did you observe as far as
3 what was the weather doing at that point?

4 A The snow had started to fall.

5 Q And, at that initial time that you're going
6 from the Waterfall to Fairview Road, was it sticking to
7 the pavement or anything at that point?

8 A I believe there was a dusting. It was
9 definitely falling. I don't think it was on the main
10 roads but definitely a dusting of snow was falling.
11 Correct.

12 Q And, from that time after you arrived at the
13 house and shortly thereafter when you observed this
14 dark SUV out in front of the house, had that changed at
15 all as far as the accumulation or sticking to the
16 pavement, roadway, grass, anything like that that you
17 saw?

18 A Yes. Yes. At some point, at least on their
19 road and their grass, you could see the snow had
20 started to -- you know, it definitely was sticking on
21 that road.

22 Q Now, you observe it initially in front of the
23 door. Then about three or four minutes later, you
24 observe it further up towards the flagpole, correct?

25 A That's correct. Yes.

1 Q And each of these times, you're not just
2 standing at the door or standing at the window, staring
3 out the entire time, correct?

4 A No. Just looking out, being like, what the
5 hell are they doing, and going back to my seat.

6 Q Okay. Other than those two times that you've
7 already testified about, was there any subsequent times
8 after that?

9 A Yes. I definitely looked out a third time out
10 the door.

11 Q And the third time that you looked out the
12 door, where was the dark SUV in relation to where it
13 had been the second time?

14 A It had now proceeded further up the road, past
15 the flagpole, past the utility box, past the fire
16 hydrant, more in line with -- between the yards, I
17 believe there's bushes and trees that separate the
18 Alberts' residence to the next residence. So it was
19 actually past the Alberts' residence, a little further
20 up. I'd say more on the edge of the property line of
21 the -- if you're looking out of the neighbors, to the
22 right, if I'm looking out of their house.

23 Q Now, this distance between the second time
24 when you saw it and the third time when you saw it, do
25 you have any idea about how much distance that was or

1 how many feet?

2 A I'd be guessing. Thirty, 40 feet. I don't
3 know. I have no idea. I'd have to measure it.

4 Q Now, with respect to the snow that had fallen
5 on the ground, as far as the vehicle was concerned, it
6 moves from one point to the second point to the third
7 point. Did you observe any sort of tire marks or
8 anything in the snow out on the road when you looked
9 out?

10 A Yes, I did.

11 Q And the tire marks that you observed, did they
12 essentially lead up to the back tires of the dark SUV
13 that you saw out there?

14 A At some point, I looked and noticed tire marks
15 that would have started before the Jeep. So if the
16 Jeep was here -- it was just a weird like wave. There
17 was a weird wave in the road. You could see the tire
18 marks.

19 Q And was that before or after -- so at some
20 point, Ms. Nagel goes out to some other vehicle and
21 then comes back inside the house, correct?

22 A Yes. That's correct.

23 Q Do you know about how long she was out of the
24 house for?

25 A I'd be guessing. A minute. I'm not sure.

1 Q Just not a terribly long time; is that
2 correct?

3 A No. No.

4 Q So the time that you observed this sort of
5 abnormality in the tire marks that you see out there,
6 was that before or after she had come back inside the
7 house?

8 A That would have been after.

9 Q So you don't know if that was from the dark
10 SUV or whatever vehicle she had met? You have no idea?

11 MR. YANNETTI: Objection.

12 THE COURT: Can you answer that? Well, the
13 form of the question. It's sustained.

14 BY MR. LALLY:

15 Q Do you know which vehicle left those abnormal
16 tire marks you saw?

17 A Based off of where the tire marks were, came
18 off the curb, I would have -- my assumption was it was
19 the SUV.

20 MR. YANNETTI: Objection. Move -- I withdraw.

21 I heard the answer. I withdraw.

22 BY MR. LALLY:

23 Q But you don't know, correct? You don't see
24 either vehicle move?

25 A No.

1 Q And that was my next point as far as when you
2 saw the vehicle as far as each of those three times, it
3 was stationary each time you saw it, correct?

4 A The first two times, definitely stationary.
5 The third time, it looked stationary. If it was going
6 a half mile per hour -- I'm not sure, but it was
7 further up the road. It looked to me like it was
8 stationary. But, like I said, if for some reason it
9 was moving, it could have been moving.

10 Q Now, each time that you saw the vehicle, was
11 it in the same sort of position with respect to the
12 house? By that, I mean as far as was it on the
13 Alberts' -- was it on the 34 Fairview side of the road
14 or the other side or where was it positioned with
15 respect to the roadway?

16 A Yes. Same position, parked parallel to the
17 Alberts' house, heading forward as if you were going to
18 leave Fairview to head up to Chapman Street, heading
19 away from the house.

20 Q And so each time that you observed the
21 vehicle, you were looking at sort of the passenger side
22 of that vehicle, correct?

23 A That is correct.

24 Q And, at any point in time of either of these
25 three occasions that you observed the vehicle, did you

1 see anybody outside of the vehicle?

2 A I did not.

3 Q Did you see any footprints around the vehicle
4 or leading away from the vehicle or across the yard or
5 anything like that?

6 A I did not.

7 Q And did you -- were you able to see inside of
8 the vehicle from where you were either from the window
9 or from the storm door or the front door?

10 A I could not or I did not see anything inside.

11 Q Further to that point, at any point in time
12 that you observed this vehicle in front of the house,
13 did you see any sort of interior lights on inside the
14 vehicle?

15 A Not that I noticed.

16 Q Now, you saw it at Point 1, Point 2, Point 3.
17 Were there any other times that you looked outside?

18 A I'm assuming I looked out because at some
19 point the vehicle was gone. So I must have looked out
20 one more time because there was no vehicle there
21 anymore. Again, I don't know if I just peeked out the
22 window and said, oh, they left again. We didn't know
23 where they were.

24 Q And do you know whether or not there had been
25 any attempt at communication by anyone in the house to

1 Mr. O'Keefe at any point?

2 A Yes.

3 Q And who was doing that?

4 A My wife was trying to communicate with John,
5 letting him know that he's here.

6 MR. YANNETTI: Objection.

7 THE COURT: I'll allow that in.

8 BY MR. LALLY:

9 Q At any point, do you know whether or not
10 Mr. O'Keefe communicated back to Ms. McCabe while they
11 were out in front of the house?

12 MR. YANNETTI: Objection.

13 THE COURT: Do you know? Not how you know but
14 do you know?

15 THE WITNESS: Do I know if Mr. O'Keefe
16 communicated back to Jen? Is that the question?

17 BY MR. LALLY:

18 Q That's my question. Yes.

19 A No.

20 Q No, she did not or, no, you don't know?

21 A Oh, no.

22 MR. YANNETTI: Objection.

23 THE WITNESS: Sorry. No, she did not. Sorry.

24 THE COURT: I'll strike that.

25 BY MR. LALLY:

1 Q Now, Mr. McCabe, with regard to this -- from
2 the first time that you sort of get up and either look
3 out the window or look out the door and see it in front
4 of the front door to the time that you look out and see
5 it for the third time or -- let me ask you this:

6 From the time that you see it in front of the
7 door to the time that you see there is no vehicle there
8 anymore, do you know how long a period of time that
9 was?

10 A I'd say at least 10 minutes. It could be 12,
11 13, 14. I don't know the exact time, but it was out
12 there for a little bit.

13 Q Let me ask it this way: As far as from the
14 first time to the second time, you have testified it
15 was about three or four or five minutes, somewhere in
16 there, correct?

17 A Correct.

18 Q The timing in between the times you looked
19 out, were they relatively consistent with each other?

20 A Yes, they were.

21 Q Okay. So you look out; three or four minutes,
22 look out again; three or four minutes, look again. Is
23 that --

24 A Yes. That would be in line. Correct.

25 Q And, at some point around 1:45 or 2:00 a.m.,

1 somewhere in there is when you leave Fairview Road; is
2 that correct?

3 A Yes.

4 Q And do you recall who drove your wife's
5 vehicle home that night?

6 A I drove.

7 Q And who, if anyone, else was in the vehicle
8 and where were they seated within the vehicle when you
9 left?

10 A So we drove -- we were driving Sara Levinson
11 and Julie Nagel home. They were in the back seat of
12 the vehicle, and my wife was in the passenger seat. I
13 don't know who sat behind the passenger and who sat
14 behind the driver, but they were in the back seat.

15 MR. LALLY: Your Honor, at this time, with the
16 Court's permission, I'd like to publish for the
17 jury and this witness Exhibits 71, 72 and 73.

18 THE COURT: Yes.

19 MR. LALLY: Ms. Gilman, if I could have
20 Exhibit 71 first?

21 BY MR. LALLY:

22 Q So, Mr. McCabe, in the desk in front of you
23 there should be a laser pointer there. If you'd just
24 click that button and point it at the screen or when I
25 or anyone asks you to do so.

1 First, just with reference as to what's up on
2 the screen as Exhibit 71, do you recognize what that
3 is, sir?

4 A Yes, I do.

5 Q And what do you recognize it to be?

6 A 34 Fairview.

7 Q And absence of the snowfall, obviously, is
8 this essentially what the house looked like on that
9 early morning of January 29th?

10 A Yes. That's correct.

11 Q And, if you could, with relation to the window
12 first and then the storm door that you were talking
13 about that you were looking out from the house, could
14 you, using the laser pointer, show the jury where that
15 is?

16 A That would be the window. That would be the
17 storm door (indicating).

18 Q And, with respect to the first placement, the
19 first time that you look out and see the dark SUV in
20 front of the house, is that visible in this photograph?

21 A Wait. Can you repeat that? Sorry.

22 Q The first time that you look out and you see
23 the dark SUV in front of the house, is that position,
24 is that visible in this photograph?

25 A I probably catch the very back end because

1 there was a Jeep parked right here. So it would be
2 right there.

3 MR. LALLY: Ms. Gilman, if I could have
4 Exhibit 72?

5 Q Again, sir, do you recognize what's up on the
6 screen?

7 A Yes.

8 Q Is that another photograph of the residence at
9 34 Fairview; is that correct?

10 A Yes.

11 Q If you could, using that laser pointer, could
12 you show the jury or demonstrate for the jury where
13 that vehicle was the first time that you saw it?

14 A I'd say right about here in this general area.

15 Q The second positioning that you were talking
16 about, is that visible on this photograph, sir?

17 A No. It would be further up the road.

18 MR. LALLY: So, Ms. Gilman, if I could have
19 Exhibit 73.

20 Q Again, do you recognize what's depicted now in
21 Exhibit 73?

22 A Yes, I do.

23 Q And that secondary position that you observed
24 the vehicle in, is it visible in this photograph?

25 A Yes, it is.

1 Q So if you could, sir, just direct the jury's
2 attention to whereabouts that would be?

3 A About in this general area right here
4 (indicating).

5 Q And the third positioning that you saw the
6 vehicle in, can you describe where that was?

7 A That would be further up the road. I'd say
8 right there (indicating.)

9 Q Thank you, sir.

10 MR. LALLY: Thank you, Ms. Gilman. You can
11 take that down.

12 Q And so, sir, when you leave the residence at
13 34 Fairview, do you recall as far as the weather was
14 concerned, what was the weather -- what, if anything,
15 had changed between the times that you had looked out
16 and the time that you came out to go home?

17 A The snow was starting to accumulate.

18 Q So the storm is starting to pick up a bit; is
19 that correct?

20 A That is correct.

21 Q And, when you came out of the house, the
22 vehicle was in the driveway, correct?

23 A That's correct.

24 Q And, again, if you could, you're driving --
25 who else is in the car and where are they in the car?

1 A I am in the driver's seat. My wife is in the
2 passenger seat and Julie and Sara are in the seats
3 directly behind us.

4 Q Do you recall who was seated where?

5 A I don't recall who was in what seat.

6 Q Okay. And you back out of the driveway, and
7 then you go -- do you recall where you were going or
8 who you were dropping off first?

9 A Yes. I back out of the driveway and proceed
10 -- back out of the driveway and proceed heading up
11 towards Chapman Street.

12 Q And so would the passenger side of your wife's
13 vehicle, would that be facing closest to 34 Fairview at
14 the time that you're driving away from it?

15 A Yes. That's correct.

16 Q And your testimony as far as the storm picking
17 up a little bit, do you recall anything you had to --
18 did you have to clear off the car or windshield wipers
19 on or anything like that in reference to the weather?

20 A Yes. I brushed the car off. I had to wipe
21 the car off with my hand and clean off the windows
22 before I pulled out of the driveway, and then obviously
23 setting the windshield wipers as I was driving away.

24 Q Now, that area over where the -- the secondary
25 position that you observed that dark SUV in over by the

1 flagpole, do you recall any sort of like street
2 lighting, ambient overhead lighting in that area?

3 A I don't recall it, no.

4 Q As you're driving away from the house, do you
5 recall whether or not -- was there any conversation or
6 music playing or anything like that in the car as
7 you're driving away?

8 A Yeah. It was chitter chatter. You know, my
9 wife was turned towards me, like turned in, talking to
10 the girls behind me. I know at one point somebody was
11 joking about peanut butter and jelly sandwiches or
12 something, something about bread. I forget what it
13 was. And I drove up the street.

14 Q And, as you were driving up the street and
15 away from the residence at Fairview, what, if anything,
16 did you observe abnormal on the side of the road? Were
17 you looking at the side of the road?

18 A I was not. I was focusing on the snow coming
19 down, the windshield wipers and driving up the street.

20 Q And fair to say you didn't see anything in the
21 yard or anything like that?

22 A That's correct.

23 Q So you drove each of the two young ladies
24 home; is that correct?

25 A Yes, it is.

1 Q And do you know about what time it was that
2 you got home, yourself?

3 A I got home give or take somewhere between
4 after 2:00. 2:10, 2:15-ish. I don't know the exact
5 time, but somewhere in that vicinity.

6 Q And, when you got home, each of your four
7 daughters, including Alli, were they all home at that
8 point?

9 A The kids were home. Correct.

10 Q And, when you arrive in the house, you and
11 your wife, where do the two of you go?

12 A Well, we first went in the kitchen. When we
13 walked in, my wife proceeded upstairs before I did. I
14 was in the kitchen for a few minutes and then went
15 upstairs and went to bed.

16 Q And did your wife go to bed around the same
17 time as you?

18 A Yes. She might have already been laying in
19 bed before I physically got in the bed. But yes.

20 Q As far as you -- well, when you fell asleep,
21 was your wife still awake or had she already fallen
22 asleep?

23 A She was still awake. We were both awake. She
24 actually wanted to watch a show which I had no desire
25 to watch. I said I was going to bed. We talked a

1 little bit about my younger daughter, about she was
2 trying for a basketball team. So we talked a little
3 bit about that. And then that was it. I went to bed.

4 Q Now, turning your attention to the morning of
5 the 29th, you woke up at some point is that correct?

6 A Yes. That's correct.

7 Q And what, if anything, do you recall? Sort of
8 what woke you up that morning?

9 A I woke up to screams in my bedroom.

10 MR. LALLY: Your Honor, may we approach just
11 briefly?

12 THE COURT: Okay.

13 (Whereupon, there was a sidebar conference as
14 follows:)

15 MR. LALLY: I'm sorry. This is just selfishly
16 on my own part. I was just looking at the time,
17 and I don't know -- I'm not going to finish with
18 him, and this might be the easiest place for me to
19 pick up tomorrow with this witness. I can keep
20 going if the Court wants.

21 MR. YANNETTI: I am completely fine with that.

22 THE COURT: I was trying to figure out whether
23 you were going to start with seven minutes. I
24 didn't know if we had any more. Would you have
25 started with seven minutes left?

1 MR. YANNETTI: No. No.

2 THE COURT: Okay.

3 MR. YANNETTI: Yesterday, I should have come
4 to sidebar to say should we end early. It was
5 yesterday or the day before. Anyway, no. I'm fine
6 with that.

7 THE COURT: I don't have a problem with it.

8 MR. LALLY: Okay.

9 THE COURT: Any surprises tomorrow? I mean,
10 evidentiary issues? I'm going to let the jury go.

11 MR. YANNETTI: That's fine.

12 (Whereupon, the sidebar conference concluded.)

13 THE COURT: Jurors, I'm told this is a good
14 place to break. So we will send you home. Please
15 make sure you follow those three cautions. Do not
16 discuss this case with anyone. Don't do any
17 independent research or investigation into this
18 case. If you happen to see, hear or read anything
19 about this case, please disregard it and let us
20 know. Tomorrow is a full day. We'll see you
21 tomorrow. Thank you very much.

22 (Whereupon, the jury is escorted from the courtroom
23 and excused for the day.)

24 THE COURT: We are back on the record.

25 (Whereupon, there was a sidebar conference as

1 follows:)

2 THE COURT: Hold on. We are back on the
3 record.

4 MR. YANNETTI: I just mentioned to Mr. Lally
5 -- he's been kind enough to give us advance notice
6 of the witnesses that he has lined up for the next
7 day. And tomorrow, after Matt McCabe we've got Jen
8 McCabe, Kerry Roberts and then two witnesses that I
9 think are going to be fairly brief. So I just
10 wanted to make sure there is nobody else after
11 that, just so that -- we have binders and binders
12 and binders of information.

13 THE COURT: I understand. This is how I
14 always tried cases and this is how the Norfolk
15 County D.A.'s office -- who do you expect to have
16 tomorrow, Mr. Lally?

17 THE COURT: I anticipate we can finish up with
18 Mr. McCabe. Then Jennifer McCabe will be after
19 that. Kerry Roberts will be after that and then
20 Laura Sullivan and Marietta Sullivan.

21 THE COURT: Okay.

22 MR. LALLY: But my expectation just on sort of
23 how cross-examination lengthwise has gone, I --

24 THE COURT: And direct.

25 MR. LALLY: -- and direct. But I imagine --

1 I'd be surprised if we get to or even get through
2 Ms. Roberts.

3 THE COURT: I hope we do. The repetitive
4 nature of the setup and where people were sitting
5 is just -- stop that.

6 MR. LALLY: I was only doing it with reference
7 to this witness, Your Honor, because I think it's
8 germane as to when he's looking out and where he's
9 going and looking out.

10 THE COURT: Which is fine, but that was toward
11 the end of your direct, the beginning of the
12 direct. I think if you asked a question on who was
13 there, who was there for the night, I think the
14 jury has an answer at this point. So just try and
15 cut it down now.

16 MR. LALLY: Absolutely.

17 THE COURT: Okay. So we are all set for
18 tomorrow?

19 MR. JACKSON: Just for prep purposes, do you
20 have any idea --

21 THE COURT: You need to come closer.

22 MR. JACKSON: Just for prep purposes, because
23 I'd like to use the afternoon wisely, do you have
24 any idea who you might have on Tuesday?

25 THE COURT: I would love to know, too, but I'm

1 not asking Mr. Lally that. If he wants to tell you
2 that, that's fine.

3 MR. JACKSON: Okay. We can talk about it
4 offline.

5 MR. LALLY: That's fine. Thank you.

6 THE COURT: All right. We'll see you
7 tomorrow.

8 (Whereupon, the Court adjourned at 12:55 p.m.)
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C E R T I F I C A T E

I, Paula M. Mills, retired certified court reporter, do hereby certify that the foregoing pages, page 19-3 to 19-187, is a true and accurate transcription of the voice recording in the aforementioned matter to the best of my skill and ability.

This, the 12th day of February, 2025.

\s\ Paula M. Mills

Paula M. Mills

Retired Certified Court Reporter
and Court Transcriptionist

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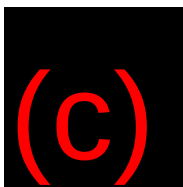
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